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ABSTRACT

Official policies concerning students' rights in Newfoundland and in the United States are examined, and standards of justification for students' rights are discussed. A questionnaire was sent to each school district superintendent in Newfoundland and to 100 selected superintendents in the State of Wisconsin. The response rate from Newfoundland was 66%; from the United States, 56%. The superintendents were asked to indicate policies concerning students' rights to free speech, free press, association membership, personal appearance and behavior, reasonable punishment, privacy, due process, and academic matters. Results showed that, in spite of the many U.S. Supreme Court rulings on student rights, only in the area of due process do over 50% of the Wisconsin school boards have an officially adopted policy. In Newfoundland, even fewer school boards have official policies. The study concludes that many current standards of justification for students' rights--i.e., the student as a constitutional person, the student as a human person, the Rawlsian standard--are inadequate. A preferred justification is the utilitarian standard, which is based on a committed concern for the greatest welfare of the greatest number. Appendices contain the research proposal, the questionnaire, and statements on students' rights. (RM)

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STUDENT RIGHTS IN NEWFOUNDLAND AND THE UNITED STATES: A COMPARATIVE STUDY

by

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1980

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STUDENT RIGHTS IN NEWFOUNDLAND AND THE UNITED STATES: A COMPARATIVE STUDY

I. INTRODUCTION: THE NATURE OF THE STUDY.

A. The Moral Concern for Student Rights.

The student rights movement which rocked educational establishments in the United States and in scattered parts of Canada is hardly known in Newfoundland. To be sure, student demonstrations and petitions have occurred occasionally in this province. Yet these activities which have caused fleeting consternation among educators and concern in the public mind appear more to be spontaneous reaction to certain lacks and inconveniences in the physical conditions of schools. There has not been any authentic attempt in the province to establish the recognition and the guaranteeing of rights or entitlements claimed to be inherently deserved by students. Indeed, there seems to be little, if any, consciousness on their part that, even as students, they are entitled to certain rights which presently they do not enjoy.

The absence of consciousness among Newfoundland

students sharply contrasts with the self-conscious, purposive militancy exhibited by their American counterparts. Why such a marked difference has existed should prove to be a significant question for educational historians and psycho-social scientists. Equally interesting would be an examination of the fact that the fire in the student movement has flickered out. Our present concern, however, is not the workings of the causal mechanism that impelled the students' fitful strivings to achieve claimed rights. Rather, our efforts in this study focus on the rights themselves- on their nature and their justification. Our intent should be clear: We want to go beyond the merely topical or fleeting. The fact appears to be that interest in student rights (as distinguished from children's rights) has waned considerably. Yet we should find it disconcerting if someone were to tell us that concern for such rights may now be set aside, and that it is time to worry about more timely issues. For whether students are motivated or not to press their claims, and whether or not the issue of student rights is foremost in the public mind, rights- if they are truly rights at all- do not lose their validity and their pressing demand on those who are supposed to satisfy them. The question

then that we would like to ask primarily is this: Are the rights that are claimed by, or on behalf of, students genuine rights? If they are, then, student protests or not, they ought to be provided for in our educational systems. Explicit policies in relation to them should be formulated accordingly. If they are not genuine rights, however, it is important to let educational participants realize why they are not and why they may not be granted. Such realization will lead to a reduction of any tensions between the school and student rights advocates. Resolution of the issue in either direction cannot but usher in a more stable, more enlightened educational atmosphere.

B. A Note on Methodology.

The present study is an unorthodox one if compared with much that is being done in contemporary research. As a legacy of positivism in philosophy and and the social sciences, it is still a prevalent view that normative research is an enterprise that should not be intermingled with descriptive research. But if only because common sense is quite compelling on this matter, normative research is better not divorced from descriptive research, and vice-versa, when one's purpose is to arrive at suitable policy decisions.

This is surely because descriptive statements are inevitably intertwined with normative judgements in the conduct of our lives. It is nothing but a truism to say that judgements made without relevant facts are foolhardy; facts not marshalled in appropriate judgements are deadwood. Most particularly in the formulation and implementation of public policy, both facts and judgements should complement each other. It is in the spirit of this very commonplace but undeniable insight that the present descriptive-normative study is undertaken.

This study is an evaluative examination of the status of student rights in Newfoundland. Immediately the descriptive aspect of the study suggests itself. For to evaluate the status of something is to evaluate a certain state of affairs. But the state of student rights in Newfoundland is vague, at best. To our knowledge, no systematic- or even incidental-study of student rights has ever been conducted in this province. Imperative therefore for our evaluative attempt is a descriptive survey that will clarify the picture for us. Hopefully, this survey will give us more than an impressionistic guesswork about the status of student rights in Newfoundland.

To etch a sharper focus on the Newfoundland

situation, the status of student rights in the province is viewed in the context of the development of student rights in the United States. This reference to the American situation seems inescapable. This is because discontent in the Canadian or local situation can often be traced to feelings or perceptions that one's group or groups have been treated inequitably in comparison with comparable groups elsewhere. The latter serve as reference for comparison which soon ends up with the question: If students elsewhere have been granted numerous rights, why are these rights denied to us?

The use of the American situation for some comparative perspective should not be taken to mean, however, that we are using the development in student rights in that country as the normative standard for judging the Newfoundland situation. To do so is to imply moral superiority or greater moral sensitivity in the American system. Such superiority or sensitivity is not obvious unless we were unduly infatuated with evolutionary progressivism or a discredited modernism. Moreover, to grant the superiority of the American stand on student rights already implies some standards by reference to which the two situations can be evaluated. But surely this standard, if it is to be

an appropriate one at all, should be independent of and impartial to the situations to be evaluated. Thus the mere fact that American students might be enjoying rights more extensively than their Newfoundland counterparts does not entail any normative judgements for or against either in the absence of standards by which each can be evaluated.

In most cultures pervaded by relativistic values, the use of certain standards for evaluation is bound to arouse suspicion. But one thing should be made clear. As long as we evaluate, certain standards are needed. Insofar as we have to discriminate between better or worse, or between right or wrong action, thing or state of affairs, standards are indispensable. Since such determination is an inevitable part of life, standards there must be. That we need them is really not debatable. Despite much wrong-headedness on this matter, the real focus of controversy is not whether we should have standards, but rather what standards are to be employed.

This controversy naturally leads us into the thicket of ethical theory- a veritable jungle which we shall enter with cautious resolve in another part of this study. At this point, however, we could note that we have chosen utilitarianism from among the

competing ethical theories in philosophy.The reasons for this choice will be presented later. For now, it suffices to say that utilitarianism, anchored on a committed concern for the greatest welfare of the greatest number of human beings, has all the promise we need for a clear-eyed normative inquiry into our human condition in general and also into the condition of students in particular.

II. A COMPARATIVE PERSPECTIVE.

A. The Rights of American Students.

Canadian human rights activists have frequently expressed envy towards the remarkable legal development in many areas of life in the United States. It has become an expectation that every so often, the American Supreme Court would hand down landmark pronouncements intended to secure and enforce the rights of American citizens. On the broad social scale, no one could fail to mark the vigor with which the Warren Court (1953-1969) spear-headed the progress in civil rights, the administration of criminal justice, the protection of individual liberties, and the strengthening and extension of political democracy.[1] In the area of our present concern, the zeal of the

U.S. Court is no less evident. Tinker v. Des Moines Independent Community School District, Goss v. Lopez, and Wood v. Strickland are three noteworthy decisions which are conceded to have altered, considerably and indelibly, the status of student rights in American schools.

Goss v. Lopez seems to be an inevitable application to the educational sphere of earlier Court rulings guaranteeing the rights of children as constitutional persons. In Kent v. United States, the Court noted its concern that children are unfairly exposed to a double hazard: That they get neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for them. Then the Court reversed a lower court decision which convicted a juvenile defendant on the ground that his trial was illegal since the procedures used to obtain evidence against him violated the Juvenile Code of the District of Columbia.[2] Subsequently in In re Gault, the Court held the following: (1) A juvenile is entitled to timely and complete notice of the charges against him; (2) he is entitled to the assistance of legal counsel; (3) he is entitled to a warning that he need not answer questions; and (4) he (or his counsel) is entitled to confront and cross-

examine witnesses against him.[3]

It was only a matter of time for these declarations to find their way to schools. They did about eight years later. In Goss v. Lopez, the Court required schools to set up hearing procedures which students could use before they are suspended. Such procedures must expressly include a statement of the charges of wrong-doing, presentation to the student of the supporting evidence if he requests to see it, and the opportunity for him to present his side of the conflict.[4] Shortly, the Court handed down Wood v. Strickland which reinforced not only Goss but also Tinker (an earlier decision to be discussed later). In the Wood decision, the Court ruled that school officials are liable for damages if they abridge the civil liberties of students. Ignorance of students' civil rights, the Court insisted, is not admissible as excuse for violation of these rights.[5]

One student right specifically recognized and sanctioned by the Court is free speech . In Tinker v. Des Moines, the Court held that in the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. In memorable language, it stated: "It cannot be said that students

shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[6]

But the Court meant to guarantee much more than freedom of speech for students. Although Tinker specifically limited itself to free speech, the majority opinion of the Court is explicit on this matter:

> In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in schools or out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State.[7]

Coupled with the Wood decision which rendered school school authorities liable to damages for violation of students' constitutional rights, the Court's view of student entitlements to rights comparable to those of adults is clear. Unfortunately the Court has left us largely in the dark about what these constitutional rights are in relation to students. It is perhaps too much to expect that a Court-enumerated list of student constitutional rights is forthcoming. Because the Court sets down judgements on matters that are litigated at hand, any such list, if possible at all, will evolve only through decades of waiting as the Court decides on relevant cases. Even so, such evolution

will still depend on the Court's inclination to pronounce along this line. Given the reduced activism of the Burger Court (in contrast with its predecessor), such a list may not be expected in a long while, if at all.

Nevertheless, the Court has made a powerful point. No longer are educators the sole, indisputable arbiter of the conduct of schools and of the status of the persons therein. Particularly with reference to students, it has shown willingness to act lest their constitutional rights be compromised.

Without disparaging their own meritorious intent, it is largely the pressure to conform to judicial pronouncements that has impelled American school boards to specify their own policies concerning student rights. The 1970's in the United States is therefore marked by the appearance of the previously unheard of student codes of conduct, or student bill of rights, or guidelines for student rights and obligations. The value of such codes cannot be underestimated in the understanding of the status of rights of American students. School board codification of student rights invests on them a legal status which binds school personnel. In general American school boards have authority to formulate school policies-

an authority which derives from school enabling acts passed by state legislatures. Typically, such acts state that a school board shall make rules for its own government, for the directors, officers, teachers, and pupils, and for the care of the school house, grounds, and the school property. They also direct boards to aid in the enforcement of school rules and to require the performance of the duties imposed by such rules and regulations. Despite the frequent observation that American education is now under the supervision of the courts, nevertheless it is still true that the U.S. Supreme Court has repeatedly emphasized the need for affirming the comprehensive authority of the states and of school officials to prescribe and control the conduct of schools.[8] Thus, when consistent with fundamental constitutional safeguards, school policies, rules, and regulations remain legal and, as such, enforcible. Unless challenged in the courts of law and shown unreasonable or unconstitutional, they describe the legal rights and responsibilities of students.

Unfortunately, not all school boards have fully responded to the judicial lessons learned by their beleaguered counterparts chastened in courts. By and large they have not codified their policies on

the rights of students. This makes it obvious that reliance on a collection of codes to find out the status of rights for American students would result in a most inadequate picture of the situation in that country.

Yet even if such codes were available, they may not be expected to present a uniform picture. The mere fact that so far, the Supreme Court has limited itself to due process in suspension cases, to pure speech, and to a general pronouncement about the liability of educators for violations of students' constitutional rights would allow school boards to adopt a variety of positions in indeterminate areas. Thus it has become necessary for this researcher to conduct a survey of the rights granted to American students by their school boards. For reasons indicated in the research proposal attached to this study as Appendix A, the American situation is being represented by the State of Wisconsin.

B. The Canadian-Newfoundland Scene.

The activism of the U.S. Supreme Court has not been matched by its Canadian counterpart.In the last few decades, one is hard put to find, at the federal level, any Supreme Court decision focussing on student rights.

There are, to be sure, judgements affecting students at the provincial level. But they merely exhibit the uncontroversial, settled principles governing the area of education. Thus, for example, Thornton v. Board of School Trustees of School District No. 57 & David Edamura confirmed that teachers and school boards could be found wanting in the exercise of reasonable care and could thus be declared negligent and liable, particularly in situations where teachers claim or possess special skills.[9] In this case, the British Columbia Court of Appeals awarded $600,000 to a boy, fifteen years old at the time of an accident incurred by him while doing physical education exercises. In Saskatchewan, the Queen's Bench decided that a defendant was liable for damages in a case where the plaintiff, a teen-aged student, fell and injured his hip while walking on an unstable gravel walkway on the defendant's school property. It held that the duty owed by a school to its students is greater than that owed by an occupier to invitee, as students are required to attend school.[10] Yet even in the area of reasonable care for children under their care, schools have not fared badly at all. Thus in the same province in the same year that the preceding case was decided, the Queen's Bench handed its decision on Bourgeault v.

Board of Education, St. Paul's Roman Catholic School District No. 20 which qualified school responsibility. In this case, a school had a policy that students are to leave school at the end of classes unless they are participating in an activity supervised by a teacher or unless given permission to remain in school. Aware of the policy, the plaintiff and other students without permission decorated the school gymnasium without any teacher around. Though the plaintiff suffered from injury when he fell off a ladder, the court declared that the school had no duty and thus was not liable.[11] Similarly, in Robison v. Board of Trustees of Calgary School District No. 19 and Franklin, the Alberta Supreme Court dismissed the action of a plaintiff who was injured when he slid down a school bannister. A discipline problem, the boy was wont to slide down bannisters though told not to do so. While the court admitted that the school board was bound to take such care of its pupils that a careful father would, it also declared that the board could not be expected to supervise the boy's use of the stairways in the school.[12]

The common law status of educational authorities is no less secure with regard to their power to enforce the conduct of the school and to shape its policies. Wilkes v. Municipal School Board of the County

of Halifax and Eastern Shore clearly shows this point. This case involved a school board which made a finding that a student had been selling drugs to other students and subsequently expelled him. The student attacked the action of the school on the ground that the board could not make the finding without a criminal conviction for trafficking. The Nova Scotia Supreme Court held that the board had the power to make such a finding and to act on it to protect its students.[13] R. v. Imbeault involved a seventeen-year-old male student who refused to complete work assigned to him by a teacher. Confronted by the teacher who touched his shoulder, he stood up in defiance. The teacher grabbed the student behind the neck to make the student sit down. The student resisted and a scuffle ensued, resulting in a slight injury to the student. The court acquitted the teacher, noting that he was not required to foresee or anticipate the student's resistance. Reviewing numerous earlier court decisions upholding parents' and teachers' authority to exercise reasonable discipline and punishment, the court concluded that the assault by the teacher was reasonable under the circumstances.[14]

Oddly enough, educational authority on matters of school policy has been recognized to transcend

parental discretion in the education of their children. In MacDonald v. Municipal School Board of the County of Halifax, the Nova Scotia Supreme Court stated that a parent has no right to have his child attend a particular school, which was a matter for the school board to determine. Here, apparently, is a ruling that in the matter of school policies, educational authorities may override parental claims.[15]

The MacDonald decision notwithstanding, the fact remains that common law underlies much of the justification for the school exercise of authority over students. As a general rule, in consonance with the doctrine of in loco parentis, it is accepted that educators act on behalf of parents in relation to the pupils under their charge. A teacher may, accordingly, control, restrain, and correct pupils if necessary to enable him to perform his duties and to accomplish the purposes of the school. "If nothing unreasonable is demanded, he has the right to direct how and when each pupil shall attend to his appropriate duties and the manner in which a pupil shall demean himself."[16] Thus it remains true that, in this country, the school board's control of student conduct inside (and, to some extent, even outside) the school is a vital, operative pinciple.

Side by side, and interacting, with common law as a source of school authority over students are the constitutional and statutory provisions relating to education. Ultimately the authority of schools in Canada derives from a determining provision in the British North Amercia Act which reads: "Section 93: In and for each Province the Legislature may exclusively make Laws in relation to Education." For Newfoundland, this provision is replaced by Section 17 of the Terms of Union (1949), which grants the Newfoundland Legislature "exclusive authority" to make education laws. By virtue of the relevant provision, each province in Canada has passed school acts creating school boards and granting them the power to control the operation of schools, including the conduct of pupils. In effect, school boards act as administrative agents for the provincial control of education. Insofar as they act within the framework of delegated authority, as legislatures in the local situation on educational matters, their formulated policies have the force of law and constitute part of the legal framework within which schools operate.

In pursuance of Section 17 of the Terms of Union, the Newfoundland legislature passed the Schools

Act of 1969 which, among other things, stipulates as follows:[17]

> 12. Subject to this Act and the regulations, every School Board shall...
>
> (s) Subject to the approval of the Minister, make regulations, rules or by-laws
>
> (i) providing for the holding of internal examinations, or for other methods of assessing the work of students in all its schools, and
>
> (ii) subject to Section 81, providing for the establishment and management of schools within its district, including, without limiting the generality of the foregoing, the suspension and expulsion of students....

The Schools Act (as amended) does go on to limit this provision. Section 83 as amended sets down the procedures to be followed where expulsion of students becomes necessary; section 84 enjoins the use of corporal punishment as a last resort and its humane and reasonable administration in the presence of a third person as witness.[18] Otherwise, however, the generality of the language of the Act allows school boards to formulate their own rules and regulations governing the conduct of their pupils.

Thus, to discover the status of student rights in Newfoundland, it is necessary to look into the policies of school boards around the province. The survey conducted as part of this study was intended to arrive at an accurate and detailed description of

the status of student rights in Newfoundland.

III. THE DESCRIPTIVE SURVEY.

A. Some Problems.

A questionnaire (see Appendix B) was sent to each district superintendent in Newfoundland and to a hundred selected superintendents in Wisconsin, U.S.A. It was hoped that because the Schools Act of 1969 expressly charges superintendents with the task of making "known to the public the policies of the School Board..." (Section 19, (o)), each superintendent would be in the best position to supply the answers to the questionnaire. Unfortunately there was a low rate of initial response, and so it was necessary to undertake a second mailing of the questionnaire to a number of superintendents. Finally, twenty-three superintendents or their chosen respondents (close to 66% of the total number: 35) replied. Fifty-six responses (56) were received from Wisconsin superintendents or their chosen respondents. The figures indicate some hesitation on the part of superintendents to participate in the study. While the reason for the hesitation has not been ascertained, some indications are apparent. Some school superintendents, both in this province and

in Wisconsin, expressed difficulty in tackling the questionnaire items because the situations they describe have simply not arisen in their districts and because, consequently, they have not had any policies relating to them. This seems to be particularly true of smaller school boards. Thus, in the U.S. survey, only 24 (48%) of 50 smaller school boards responded; in contrast, 32 (64%) of 50 larger school boards sent in their replies.

In relation to this, we might mention a view that could well underlie some comments from a few respondents. The view is, as one respondent put it, that "rights are ascribed, after incidents have arisen, for similar future events." With this view in mind, it may be concluded erroneously, as the respondent does, that the items in the questionnaire cannot reflect the present situation in his (or some other Newfoundland) school district, the situations described by the items not having occurred as yet in his district. It may be concluded, further, that there is not much need to participate in the study, insofar as it does not relate to the Newfoundland reality.

It should therefore be noted immediately that the questions by themselves are not meant to reflect the present school situation in each district. Rather,

they are meant to find out the situation for each district. And there seems to be no better way of finding out than obtaining responses at the school board level. To say that in one's school district, there generally are no policies on specific rights of students because situations calling for them have not arisen, and subsequently to refrain from answering the questionnaire is to keep the situation blurred in our minds. It might well be that there are definitive policies on some items of the questionnaire. And, of course, not to participate altogether is to withhold from the public important information needed to enlighten them.

In any case, it is definitely a mistake to think that specific rights are ascribed only after conflict situations raising them have come about. Surely, in the United States, the Supreme Court has declared on only a very limited set of student rights. This has not prevented many American school boards from formulating codes identifying rights of students in specific terms. This they have done even without conflict situations confronting them. In fact, they have formulated the policies precisely to avoid conflict situations. Indeed it should prove to be a questionable, if not wrong-headed, administrative strategy to wait

for confrontations before drawing up school board policies.

The present researcher would like to believe that this study- and its questionnaire- could at least prod school authorities into thinking more seriously about the rights of students. We cannot but agree with a Newfoundland respondent who wrote as follows:

> None of us in education can afford to become smug about the rights and freedoms we <u>think</u> children have. Too often the disputed point is merely the way a teacher feels about what is appropriate.

B. <u>The Results</u>. See pages 26-35.

RIGHTS GRANTED	YES		NO		POLICY IS: OFFICIAL		CUSTOM OR PRACTICE	
	Nfld. No.(%)	Wis. No.(%)	Nfld. No.(%)	Wis. No.(%)	Nfld. No.(%)	Wis. No.(%)	Nfld. No.(%)	Wis. No.(%)
I. The right to free speech:								
1. Students are free to criticize teachers, school officials, and their policies in public;	11(52)	44(79)	7(33)	10(18)	1(05)	8(14)	15(71)	37(66)
2. are allowed to incite others to demonstrate or sit-in;	9(43)	10(18)	10(48)	41(73)	2(10)	12(21)	17(81)	27(48)
3. are free to express political or ideological views in school during off hours;	18(86)	47(84)	1(05)	7(13)	0(00)	17(30)	17(81)	27(48)
4. are free to use symbolic materials (armbands, buttons, etc.) in classrooms and on campus;	17(81)	47(84)	1(05)	7(13)	0(00)	12(21)	17(81)	29(52)
5. are free to protest, demonstrate or sit-in on campus grounds;	8(38)	15(27)	11(52)	39(70)	1(05)	13(23)	17(81)	29(52)
6. are free to invite speakers of their choice for convocations without consulting school authorities;	4(19)	5(09)	15(71)	48(86)	4(19)	19(34)	14(67)	26(46)
7. may invite speakers who advocate violent overthrow of government	2(10)	1(02)	15(71)	51(91)	1(05)	12(21)	15(71)	30(54)
8. are free to invite speakers whose views on sensitive matters are rejected in the community.	4(19)	22(39)	15(71)	30(54)	1(05)	13(23)	15(71)	28(50)

RIGHTS GRANTED	YES		NO		Policy is: OFFICIAL		CUSTOM OR PRACTICE	
	Nfld.	Wis.	Nfld.	Wis.	Nfld.	Wis.	Nfld.	Wis.
II. The right to free press:								
1. Students are free to distribute non-school materials such as political manifestoes on the campus during off hours;	5(24)	28(50)	12(57)	25(45)	0(00)	11(20)	17(81)	29(52)
2. are free to write articles critical of teachers, officials, and their policies;	10(48)	43(77)	7(33)	10(18)	0(00)	13(23)	15(71)	29(52)
3. may publish and distribute student papers without any review or censorship by school authorities;	2(10)	13(23)	17(81)	40(71)	2(10)	18(32)	16(76)	24(43)
4. may include in student papers articles that (i) deal with sensitive or controversial topics;	11(52)	37(66)	6(29)	15(27)	1(05)	14(25)	13(62)	27(48)
(ii) advocate illegal action or disobedience to school regulations;	0(00)	5(09)	19(90)	48(86)	0(00)	18(32)	15(71)	24(43)
(iii) contain obscene or illicit materials;	0(00)	3(05)	19(90)	50(89)	1(05)	19(34)	14(67)	22(39)
5. Student papers may include advertisement by radical or subversive groups;	2(10)	5(09)	15(71)	46(82)	1(05)	8(14)	15(71)	28(50)
may include advertisement of a sensitive nature (e.g., related to sensuality, irreverence, political unorthodoxy, and others);	1(05)	7(13)	15(71)	41(73)	1(05)	8(14)	14(67)	28(50)

RIGHTS GRANTED	YES		NO		Policy is: OFFICIAL		CUSTOM OR PRACTICE	
	Nfld.	Wis.	Nfld.	Wis.	Nfld.	Wis.	Nfld.	Wis.
6. Students may publish within school premises a paper not officially recognized by school authorities;	2(10)	11(20)	15(71)	41(73)	2(10)	14(25	14(67)	25(45)
7. the student editorial staff are free to choose their faculty adviser.	14(67)	6(11)	5(24)	48(86)	0(00)	23(41)	17(81)	22(39)
III. The right to form or join associations								
1. Students may form socio-political or pious clubs representing the school counterpart of accepted organizations;	12(57)	33(59)	4(19)	21(38)	1(05)	12(21)	14(67)	31(55)
2. may form socio -political clubs whose beliefs go counter to those held by the community;	6(29)	30(54)	9(43)	25(45)	1(05)	11(20)	13(62)	31(55)
3. are free to choose their club's faculty adviser;	12(57)	17(30)	5(24)	37(66)	1(05)	16(29)	14(67)	26(46)
4. are free to hold student-planned activities outside campus without interference from school authorities;	11(52)	30(54)	7(33)	20(36)	1(05)	12(21)	13(62)	27(48)
5. are free to join any number of school organizations within range set by school	17(81)	50(89)	1(05)	2(04)	5(24)	15(27)	12(57)	24(43)
are free to join any club based outside the campus.	16(76)	48(86)	2(10)	3(05)	0(00)	6(11)	17(81)	33(59)

RIGHTS GRANTED	YES		NO		Policy is: OFFICIAL		CUSTOM OR PRACTICE	
	Nfld.	Wis.	Nfld.	Wis.	Nfld.	Wis.	Nfld.	Wis.
IV. The right to personal appearance and behavior								
1. Male students are free to have long hair;	19(90)	50(89)	1(05)	0(00)	4(19)	22(39)	14(67)	17(30)
2. female students may come to class with hairdos of their choice;	19(90)	51(91)	1(05)	0(00)	4(19)	22(39)	12(57)	18(32)
3. students are free from any dress code imposed by school authorities;	15(71)	36(64)	4(19)	17(30)	7(33)	25(45)	6(29)	16(29)
4. may wear any clothes or dress of their choice;	10(48)	34(61)	10(48)	19(34)	7(33)	25(45)	8(38)	16(29)
5. are free to smoke in the classrooms;	0(00)	0(00)	20(95)	53(95)	11(52)	42(75)	5(24)	3(05)
are free to smoke only in specified areas;	14(67)	22(39)	3(14)	27(48)	9(43)	41(73)	5(24)	3(05)
6. schools are required to have a behavior code;	10(48)	20(36)	10(48)	32(57)	9(43)	21(38)	5(24)	19(34)
students have had significant input in formulating the code;	3(14)	24(43)	4(19)	13(23)	2(10)	12(21)	2(10)	13(23)
7. students are allowed to kiss or embrace intimately on campus.	1(05)	2(04)	17(81)	48(86)	4(19)	12(21)	11(52)	28(50)

RIGHTS GRANTED	YES		NO		Policy is: OFFICIAL		CUSTOM OR PRACTICE	
	Nfld.	Wis.	Nfld.	Wis.	Nfld.	Wis.	Nfld.	Wis.
V. The right to privacy								
1. School authorities may undertake searches of student bags and briefcases;	11(52)	32(57)	9(43)	20(36)	2(10)	19(34)	15(71)	26(46)
may allow others to make such searches;	6(29)	18(32)	8(38)	21(38)	2(10)	18(32)	10(48)	14(25)
2. may undertake searches of student lockers and desks;	18(86)	51(91)	2(10)	3(05)	4(19)	26(46)	12(57)	17(30)
may allow others to make such searches;	10(48)	23(41)	4(19)	13(23)	3(14)	17(30)	8(38)	12(21)
3. information from student's file may be released only on his request or with his consent;	5(24)	50(89)	14(67)	4(07)	2(10)	44(79)	14(67)	2(04)
4. confidential student information may be talked about only in professional or official situations.	19(90)	51(91)	1(05)	2(04)	3(14)	30(54)	14(67)	13(23)
VI. The right to reasonable punishment								
1. Schools are required to have a code or a statement that contains list of punishable school offenses;	4(19)	27(48)	16(76)	28(50)	5(24)	24(43)	11(52)	17(30)
2. the code contains punishment for each given offense;	0(00)	26(46)	13(62)	21(38)	0(00)	21(38)	11(52)	12(21)

RIGHTS GRANTED	YES		NO		Policy is: OFFICIAL		CUSTOM OR PRACTICE	
	Nfld.	Wis.	Nfld.	Wis.	Nfld.	Wis.	Nfld.	Wis.
3. school authorities may suspend or expel a student convicted of an offense by civil authorities;	12(57)	26(46)	5(24)	27(48)	5(24)	27(48)	9(43)	13(23)
4. students may be granted diplomas or may have records sent to employers even if schools' accounts are not paid;	10(48)	31(55)	6(29)	22(39)	1(05)	23(41)	10(48)	19(34)
5. students may be expelled or given long-term suspension for serious offenses;	18(86)	49(88)	1(05)	5(09)	15(71)	43(77)	2(10)	4(07)
6. teachers by themselves may spank or strap students according to their sole individual judgements;	4(19)	15(27)	15(71)	39(70)	13(62)	37(66)	3(14)	8(14)
7. physical punishments may be inflicted on students.	15(71)	26(46)	4(19)	28(50)	14(67)	33(59)	2(10)	12(21)
VII. The right to due process								
1. Before student expulsion or long-term suspension, school authorities must (i) give student (and parents) a notice of hearing;	18(86)	55(98)	0(00)	0(00)	13(62)	45(80)	3(14)	1(02)
which contains (ia) statement of alleged offense;	18(86)	55(98)	0(00)	0(00)	13(62)	45(80)	3(14)	1(02)

13/

RIGHTS GRANTED	YES		NO		Policy is: OFFICIAL		CUSTOM OR PRACTICE	
	Nfld.	Wis.	Nfld.	Wis.	Nfld.	Wis.	Nfld.	Wis.
(ib) declaration of student's right to legal counsel;	10(48)	53(95)	7(33)	2(04)	6(29)	43(77)	8(38)	3(05)
(ic) description of the hearing procedure;	12(57)	50(89)	2(10)	4(07)	5(24)	41(73)	8(38)	4(07)
(ii) conduct a hearing;	4(19)	47(84)	3(14)	1(02)	2(10)	37(66)	4(19)	1(02)
(iia) which includes informing student of his right to remain silent;	5(24)	43(77)	7(33)	8(14)	2(10)	35(63)	8(38)	4(07)
(iib) presentation of evidence or witness against student;	9(43)	51(91)	3(14)	1(02)	3(14)	38(68)	7(33)	3(05)
(iic) cross-examination of accusatory evidence;	7(33)	51(91)	5(24)	2(04)	2(10)	37(66)	8(38)	3(05)
(iid) presentation of evidence or witness on behalf of the student;	8(38)	51(91)	4(19)	2(04)	2(10)	37(66)	8(38)	3(05)
(iie) recording of the proceedings;	8(38)	49(88)	3(14)	1(02)	2(10)	34(61)	7(33)	4(07)
(iii) make findings clear to student and parents;	9(43)	52(93)	2(10)	1(02)	4(19)	38(68)	5(24)	3(05)
(iv) allow student or parents to make an appeal.	14(67)	51(91)	1(05)	1(02)	7(33)	38(68)	6(29)	2(04)
2. Procedures for short-term suspension are the same as those for long-term suspension.	10(48)	24(43)	8(38)	30(54)	11(52)	36(64)	4(19)	6(11)
3. For short-term suspension, school authorities are required to undertake uniform procedures.	19(90)	52(93)	1(05)	2(04)	12(57)	39(70)	3(14)	5(09)

4. For short-term suspension, school authorities are required to follow these procedures:	Nfld.	Wis.
A. Pre- suspension stage		
1. informing parents of the problem;	8 (38)	1 (02)
2. warning (or informal conference) with student);	8 (38)	
3. counselling;	1 (05)	
4. conference with parents with or without student.	7 (33)	
B. Suspension stage		
1. (i) informing student of charges or action to be taken;		18 (32)
(ii) informing parents of charges or action to be taken;		12 (21)
2. conference with student;		1 (02)
3. conference with parents and staff concerned with or without student; or		5 (09)
informal hearing:		
(i) presentation of charges and evidence;		18 (32)
(ii) explanation of evidence;		14 (25)
(iii) student response or presentation of his case;		24 (43)
(iv) cross-examination;		4 (07)
(v) help from legal counsel;		1 (02)
4. informing parents of suspension;	15 (71)	23 (41)
5. informing student of suspension.	6 (29)	14 (25)
C. Post-judgement stage		
1. Re-entry conference with parents with or without student;	1 (05)	9 (16)
2. re-entry conference with student;	1 (05)	
3. appeal;	1 (05)	5 (09)
4. hearing as above.		1 (02)

D. Second or subsequent suspension	Nfld.	Wis.
1. Informing parents of the suspension;	1 (05)	
2. recommendation by principal	1 (05)	
3. conference involving parents, teacher and principal	2 (10)	1 (02)
4. meeting of principal, local school committee, and superintendent.	2 (10)	
5. School authorities may cause the immediate removal of a student from school or campus under the following circumstances:		
1. Principal's discretion;	1 (05)	0 (00)
2. serious offense;	1 (05)	1 (02)
3. smoking;	1 (05)	2 (04)
4. has caused or poses hazard to other students;	7 (33)	32 (57)
5. insubordination, violations of school rules, immoral conduct;	9 (43)	9 (16)
6. repeated violations of rules;	0 (00)	3 (05)
7. disruption of educational process;	2 (10)	11 (20)
8. selling drugs;	0 (00)	1 (02)
9. under influence of alcohol or drugs;	0 (00)	10 (18)
10. illegal acts;	0 (00)	4 (07)
11. uncontrollable behavior;	0 (00)	3 (05)
12. fighting;	0 (00)	2 (04)
13. disrespect for school personnel;	0 (00)	1 (02)
14. physical illness.	0 (00)	1 (02)

RIGHTS GRANTED	YES		NO		Policy is: OFFICIAL		CUSTOM OR PRACTICE	
	Nfld.	Wis.	Nfld.	Wis.	Nfld.	Wis.	Nfld.	Wis.
VIII. **The right to academic matters**								
1. Students have final say which stream (vocational or otherwise) to go to;	14(67)	39(70)	6(29)	13(23)	4(19)	26(46)	12(57)	16(29)
2. have final say whether to go to special class or any grouping based on ability;	5(24)	19(34)	15(71)	34(61)	4(19)	32(57)	11(52)	11(20)
3. have final say in determining their elective subjects;	10(48)	45(80)	9(43)	7(13)	6(29)	27(48)	9(43)	11(20)
4. are represented in curricular committees;	3(14)	24(43)	14(67)	28(50)	0(00)	8(14)	14(67)	28(50)
5. are represented in policy-making committees or bodies;	4(19)	34(61)	14(67)	17(30)	1(05)	13(23)	13(62)	25(45)
6. are given freedom in determining the content of their subjects;	1(05)	6(11)	17(81)	45(80)	2(10)	5(09)	12(57)	31(55)
are given freedom in determining the manner or methods of going about their work in subjects.	2(10)	9(16)	14(67)	30(54)	3(14)	2(04)	10(48)	27(48)

C. Some Highlights

Perhaps the comparison between Newfoundland and American school boards can best be discussed by employing the descriptive terms "conservative" and "liberal". The conservative syndrome, as Vallee and Whyte point out, is made up of "a tendency to be guided by tradition; to accept the decision-making of elites, many of whom virtually or actually inherit their positions; to put a strong emphasis on the maintenance of order and predictability."[19] Conversely, liberalism is characterized by a tendency to depart from tradition, to emphasize participatory democracy, and willingly to accept or tolerate some degree of uncertainty and instability as a price to pay for novelty and progress. Using this definition, sociologists have generally agreed that the conservative syndrome is the most noticeable trait of the Canadian society.[20] The American society, on the other hand, is seen comparatively to exhibit the liberal character.[21] It should prove interesting to examine whether this general characterization of the two countries is shown by our study in the area of student rights.

The right to free speech. In light of the conceded conservatism of the Canadian society in

comparison with its American counterpart, it should be a surprise that Newfoundland school boards stand favorably vis-a-vis American school boards in relation to the area of free speech. At least with reference to some specific freedoms, the Canadian conservatism is not confirmed, insofar as Newfoundland educators, even more than their American counterparts, show willingness to grant civil liberties to students. If the dictum that "children are to be seen but not heard" is a trite expression of the conservative ethos, Newfoundland school boards are anything but conservative. It is true that a greater percentage of American school boards have it as policy to grant students the right to criticize educators and their policies publicly (I,1); the right to use symbolic materials (I,4); and the right to invite controversial speakers (I,8). However, a greater percentage of Newfoundland school boards would allow students the freedoms to incite others to demonstrate (I,2); to express political or ideological views in school during off hours (I,3); to protest or demonstrate on campus grounds (I, 5); to invite speakers without consulting school authorities (I, 6); and to invite speakers who advocate violent overthrow of government (I, 7). It could also be seen that, as might be expected, both the Newfoundland and American school

boards harden their positions as the freedom claimed edges closer to the possibility of disorder or violence. Thus from a high of 86% (Nfld.)/84% (Wis.) for student right to express political views(I, 3), and of 81% (Nfld.)/84% (Wis.) for student right to use symbolic materials (I, 4), school board liberalism dips to 10% (Nfld.)/2% (Wis.) for freedom to invite speakers who advocate overthrow of government and to 19% (Nfld.)/9% (Wis.) for freedom to invite speakers without consulting school authorities.

The right to free press. Both Newfoundland and American school boards appear considerably more conservative in relation to the right to free press. Their liberal stance reaches no more than 52% (Nfld.)/66% (Wis.) for student freedom to include in student papers those articles that deal with sensitive or controversial topics (II, 4, i); and 48% (Nfld.)/77% (Wis.) for freedom to write articles critical of educators and their policies. On the other hand, their negative reach is deep indeed: to as low as 0% (Nfld.)/9% (Wis.) for freedom to write in student papers those articles that advocate illegal action or disobedience to school regulations; and to 0% (Nfld.)/5% (Wis.) for freedom to write articles containing obscene or illicit materials. Incidentally, these last figures are some

indication that both school boards are concerned, as will be gathered from other indications later, not only with maintenance of school order, but also with insisting on school morality. Moreover, while both show some willingness to tolerate written criticism of educators and to see in print student treatment of sensitive topics in general, nevertheless, they become increasingly uncompromising when such treatment becomes serious enough to approach likely disorder or obscenity.

Their similar inclinations on the freedom of press, notwithstanding, American school boards definitely show greater liberalism in most indicators in this area with the exception of II, 5 (inclusion of radical/subversive advertisement in student papers) and II, 7 (freedom to choose their faculty adviser).

The right to form or join associations. In some contrast with the preceding area, school boards show marked liberalism in relation to the student right to form or join associations. Thus 81% (Nfld.)/89% (Wis.) of the respondent school boards grant their students the freedom to join any school organization provided they stay within a certain range set by the school authorities. Also, 76% (Nfld.)/86% (Wis.) allow students to join any organization based outside the

campus. The lowest percentages of positive response in this area are registered in relation to III, 2 (the freedom to form socio-political or pious clubs whose views or beliefs go counter to community views, to which 29% (Nfld.)/54% (Wis.) of the respondents conceded. In this area, over-all Canadian conservatism as contrasted with American liberalism is rather evident. However, the Newfoundland and American school boards reverse their comparative positions in relation to students' freedom to choose their club's adviser. Fifty-seven percent (57%) of Newfoundland school boards, as against 30% for their American counterpart, responded to this item positively. This confirms an earlier figure registered for student freedom to choose their faculty adviser for student paper purposes. But this confirmation simply reinforces the curious situation in which an over-all American picture of liberalism is dotted by a rather isolated liberalism on the part of the Newfoundland school boards.

The right to personal appearance and behavior. This survey definitely confirms that the right to personal appearance, at least within certain bounds of decency and within health or safety requirements, has been achieved by students whether in Newfoundland or in the United States. Thus, 90% (Nfld.)/89% (Wis.)

of the school boards indicate that male students are free to sport long hair, while 90% (Nfld.)/91% (Wis.) allow female students to come to class with hairdos of their choice. Similarly, 71% (Nfld.)/64% (Wis.) state that their schools do not impose any dress code on students. Despite this, however, there are some things that are still pretty much forbidden in the schools or on campus. Thus, kissing or intimate embrace is verboten, allowed only by minuscule percentages: 5% in the Newfoundland situation, and 4% for the American counterpart. But smoking is seen as a worse offense: absolutely no school board allows smoking in the classroom, whether in Newfoundland or in the United States. Perhaps as a concession to the unavoidable, 67% (Nfld.)/39% (Wis.) specify areas where a student may smoke.

No straightforward conclusions can be made about the comparative liberalism or conservatism of the two school boards in relation to student right to personal appearance and behavior. While they have a fairly close stand on some specific rights (IV, 1, 2, 5, and 7) they differ widely in others (IV, 3, 4, and 6); and while Newfoundland school boards veer towards greater conservatism on some matters, they tend to be liberal on others.

The right to privacy. Close correspondence, save in one instance, can be seen between the Newfoundland and the American school boards in connection with their stance in the area of student privacy. By and large both boards (Nfld.- 86%; Wis.- 91%) regard it to be within their competence to undertake searches of student lockers and desks. The underlying idea seems to be that lockers and desks are school property and thus are subject to the inspection by school authority. In contrast to this, only 52% (Nfld.)/57% (Wis.) of the boards allow the search of student bags and briefcases. Similarly again, they are much in agreement (Nfld.- 90%; Wis.- 91%) that teachers and school authorities may not talk (although they do! as some respondents have pointed out) about confidential student information except in professional situations. Wide divergence is registered, however, in relation to the release of information from a student's personal file. While only 24% of the Nfld. school boards would withhold such information without student consent, 89% of American school boards would do so. Respondents' comments would indicate that for the former school boards, the source of consent is the parent, although some American respondents note that parental consent is required together with that of

the student.

The right to reasonable punishment. Apparently, both school boards still believe that expulsion and long-term suspension are acceptable as modes of punishment in the schools. About 86% (Nfld.)/88% (Wis.) of them would expel or suspend students for serious offenses. On the other hand, they both seem to frown upon the individual teacher spanking or strapping students according to their sole discretion. Only 19% (Nfld.)/27% (Wis.) would allow their teachers to do so. However, they have adopted significantly different positions on other matters. Thus only 19% of Nfld. boards, as against 48% for their American counterparts, require schools to have a code or a statement containing a list of punishable school offenses although such a statement is an important ingredient of a fair administration of disciplinary justice. And while 71% of the Nfld. boards allow the infliction of physical punishment on pupils, only 46% of their American counterpart do so. Similarly, while a majority (57%) of the former allow the suspension or expulsion of a student who has been convicted of a crime or offense by civil authorities, only a minority (46%) of the latter do.

The right to due process. At surface, Newfoundland and American school boards appear similarly to recognize the need for certain procedures before a student is subjected to expulsion or long-term suspension. Thus 86% (Nfld.)/98% (Wis.) of the boards require that students and parents be served a notice of hearing and that they be informed of the students' alleged offenses. However, a far greater percentage of American school boards provide for certain procedural steps largely unprovided for in the Newfoundland situation. Thus, for example, while 95% of the former inform parents/ students that the student has a right to legal counsel, only 48% of the latter do so.

Paradoxically, and for undetermined reasons, while 86% of the Newfoundland respondents require serving notice of a hearing to the student and his parents, only 19% would require a hearing. This could possibly be explained by suggesting that Newfoundland school boards perhaps conceive of a hearing in terms of an informal conference among school authorities, parents, and students- not in terms of the elaborate procedures required in most American schools. It is instructive that among Newfoundland school boards, only 24% would (a) inform the student of his right to remain silent; 43% would require (b) present-

ation of evidence and witnesses against the student; 33% would permit (c) cross-examination; 38% would allow (d) presentation of evidence and witnesses on behalf of the student; and 38% would (e) record the proceedings of the hearing. This compares, quite significantly and unfavorably, against the American percentages: 77% for (a); 91% for (b); 91% for (c); 91% for (d); and 88% for (e).

While both school boards (90% for Nfld.; 93% for Wis.) require school authorities to undertake certain uniform procedures leading to short-term suspension of a student, they differ in the aspects of the process that they emphasize. Based on the volunteered information from some respondents, it may be suggested that Nfld. school boards see warning to the student and notification of his parent as important parts of the disciplinary mechanism. This mechanism is a minimal one, however. Once the warning and the notification about student problem have been issued, suspension can be declared without a hearing. In contrast, American responses would indicate that school boards south of the Canadian border attempt to require some rudiments of a hearing. Among these are the presentation of charges and evidence against the student, an explanation of the evidence, and student

presentation of his case.

The right to academic matters. Despite much clamor for student participation in academic processes which arose both in the United States and in Canada during the late Sixties and the late Seventies, apparently little was achieved in the area of student academic freedom. Thus only 5% (Nfld.)/11% (Wis.) would grant students freedom to determine the content of their subjects, and only 10% (Nfld.)/16% (Wis.) would allow them to decide on the manner or methods of going about their work in their subjects. American students seem to enjoy more in relation to representation in policy-making committees or bodies (61% v. 19% for Nfld.) and in curricular committees (43% v. 14% for Nfld.). At this point, it may also be noted that students, particularly in Newfoundland, are given little participation in the formulation of codes or guidelines which are sometimes made available.(IV, 6 and VI, 2).

American students also fare better, percentage-wise, with reference to the determination of their elective subjects. About 80% of their school boards, as against 48% for Nfld., give them a final say on the matter. Surprisingly a substantial percentage of Newfoundland and American school boards grant students

the final say in determining which stream (vocational, academic, etc.) to go both. The figures registered for the last two indicators should be treated with caution, however. On both of these matters (VIII, 1 and 2), some boards require parental consent or signature. The requirement of parental consent is even more pronounced in connection with the placement of a student in a special class based on ability or talent. About 24% (Nfld.)/34% (Wis.) would give students a final say in this respect. Even so, comments from respondents show that parental consent, together with that of the student, is frequently required.

General conclusions on substantive policies. In light of the recent legal developments in the field of education in the United States, one would be inclined to expect very pronounced differences between American and Newfoundland school boards as far as their policies on students rights are concerned. This study, however, does not bear out that expectation consistently. Nevertheless, there are differences and, in terms of liberalism or a tendency to provide for student claims, these differences generally incline in favor of the American school boards. While the differences are negligible in areas I, II, III, IV, and V (with some notable exceptions), nevertheless significant differ-

ences are registered in areas VI, VII and VIII. In what may be regarded as positive indicators of liberalism in area VI (1, 2 & 4), American response averages 46% as against 18% for Newfoundland; on the other hand, in the items indicative of the conservative or "hard" position against students (3, 5, 6, & 7), the latter school boards register a greater percentage: 58% v. 52%. More significant differences appear in areas VII and VIII. The richness of due process requirements to safeguard a fair treatment of students in the United States is evident from the average positive response of 91% for the U.S. school boards. This contrasts sharply with an average of 49% for their Newfoundland counterpart. Similarly, in relation to academic matters (area VIII), the American positive response averages 45%; Newfoundland school boards manage only 27%.

General conclusions on the status of school policies. It would seem natural to expect that the U.S. Supreme Court rulings on student rights will have spurred American school boards into explicitly formulating their official policies on such rights. The current American situation, if the State of Wisconsin is any indication at all, goes against the natural expectation to a large degree. Clearly, in each of four

areas (I, II, III, & VIII), only about a quarter of the American school boards in the average have officially adopted policies on specific student rights. In each of three other areas (IV, V, VI), rights are officially provided for by less than half of the boards. It is only in one area (VII) that a somewhat impressive percentage is recorded.

Even so, however, the American figures are bound to appear remarkable when compared with the corresponding figures registered for Newfoundland school boards. The sharp comparison emerges as follows:

Areas	Nfld. %	Wis. %
I. Free speech	6	23
II. Free press	4	26
III. Association	7	22
IV. Personal appearance	25	44
V. Privacy	13	46
VI. Reasonable punishment	32	49
VII. Due process	29	69
VIII. Academic matters	14	29

Based on the figures above, we would be justified in making the observation that the most noticeable difference between Newfoundland and American school boards is the extent or the degree to which they have consciously and deliberately drawn official

policies in relation to student rights.

IV. FROM FACTS TO VALUES: THE NEED FOR NORMATIVE EVALUATION OF EDUCATIONAL POLICY.

No doubt, numerous interpretive conclusions can be made from our descriptive survey of Newfoundland and American student rights. However, two salient observations need to be highlighted for our purposes. First, there are marked differences between American and Newfoundland school boards at least in relation to some areas. In this regard, it is not clear which school boards deserve commendation or require some reform. Presuming that treatment of students can be evaluated in terms of ideal standards, it is not clear which boards measure up more closely to such standards.

Second, whether in the U.S. or in Newfoundland, school boards still differ on how children or students ought to be treated. While many school boards show much willingness to grant students numerous rights, still others resist the idea that students are full-fledged citizens or persons who are no less entitled to rights normally enjoyed by adults. This resistance is all the more noticeable in the American situation because of the coercive impact of Supreme Court judgements. There still seems a feeling that school authorities should determine school policies governing

students. One respondent puts it this way candidly: "Don't give away all of school authority without a battle or you might just as well close up shop." Naturally, contrary policies that offend court pronouncements will sooner or later have to be reversed by school boards themselves. Because the law is what the Court says it is,[22] and because the law carries with it the power of enforcement, there is no question about whose views will prevail eventually.

Immediately, however, the crucial issue should be drawn. While Court decisions are decisive about what is legal or illegal, they are <u>not</u> definitive about what is right and what is wrong. A court of law by necessity attempts to approximate acceptable moral standards. To fail to do so is eventually to lose the community's respect and obedience needed for the continued authoritativeness of the law. But the law does not always measure up to moral ideals. Paul Weiss might have been excessively severe when he bluntly insisted that "a constitutionally respectable law can, as a matter of fact, be then and there bad, immoral, mistaken, unjust. It could endorse slavery, cannibalism, a caste system, special privileges, gas chambers."[23] But he is closer to the truth when he added that "not

everything that a Constitution enjoins or permits ought to be. It does not always decree what is good for men, the society, or state."[24] But more accurately, the situation which Courts are frequently faced with involves the declaration of the primacy of a certain value or principle among a number of competing values in particular case. In this task, the Court is not infallible.[25] In some cases, at best, it is not clear whether the court has opted for the right value or principle. For instance, the U.S. Supreme Court has ruled positively in favour of affirmative action by way of preferring members of racial or ethnic minorities in hiring applicants for jobs.[26] However, such a decision goes contrary to the long-established principle of individual justice towards everyone- in this case, the qualified white applicants. It is far from clear that the court has chosen the right principle in this trade-off situation.

The Canadian (including Newfoundland) picture is somewhat different from its American counterpart. School boards in this country continue to enjoy a tradition of wide discretion in the governance of students. Save in a few isolated areas where the courts have made numerous pronouncements (e.g., area of reasonable care), boards have been generally free to establish their policies

unencumbered by interferences or supervision from the courts. While they may do so, however, they remain subject no less to moral evaluation. Such evaluation becomes inevitable in light of the growing sensitivity in many people about the moral rights of children and students as human beings, and in light of the increased recognition of the nature of rights. There appears to be a justified awareness that rights, insofar as they are human rights at all, are deserved by everyone, including children. Thus if a number of rights are enjoyed by children and students elsewhere, there seems to be no reason why Canadian or Newfoundland children and students should not similarly enjoy them. More and more, we will be confronted by the inescapable query: Are the rights being granted to children and students deserved by them? Ought they be granted to the young under our charge in Canada and particularly in Newfoundland? What moral standards, principles, or values can we use to guide us in our policy-making tasks?

Surely the last question is the crucial one. Only by providing an answer to it that resolution of the preceding questions can be undertaken. But it is also equally certain that the standards needed cannot be arrived at by way of a factual survey- whether the survey be that of the views of the community, of the

students, or even of the educators themselves. The pluralism in the moral standards or values in any given society as well as in any given educational profession would leave us confronted with unresolved value choices to make. The problem is far from settled even when there appears to be unanimity within the public and the educational profession. A factual survey of their views by the social sciences about community standards and other matters related to the problem does not tell us that those standards ought to be institutionalized in and enforced by the law. As Professor Coons points out, "Social science cannot provide values," although, like other bases for prediction, it can suggest the value trade-offs entailed in the court's adoption of this or that decisional norm."[27] In the process of adjudication, social science can discharge two typical roles. First, it can supply impact predictions, thereby helping courts to fashion rules for decision that will optimize the values they perceive to be at stake. Second, it may subsequently help prove or disprove alleged violations of rules that courts have fashioned.[28] That facts gathered by social sciences are not central to adjudication is confirmed explicitly by judges themselves. Hon. William Doyle, Circuit Judge of the U.S. Court of Appeal, categorically put it as follows in his

response to the question: Can social science data be used in judicial decision-making?

> . . . Social science data or evidence is less important in judicial decisionmaking in the field of constitutional law than is generally assumed.[29]

> Far more important... is... basic law.... The decisive factor is the Constitution of the United States which protects all citizens from violation of their rights by state legislatures or other policy-making agencies of the state. The elements which are considered in making this decision are the wording of the Constitution, sometimes history; precedent in the form of court decisions, reason and moral or natural law.[30]

Social science data then perform significant roles in the judicial process as in many other decision-making processes in society and its institutions.[31] But in the task of adjudicating, which involves declaring principles for human action and restraint, the vital elements are values and moral principles. Thus in relation to Rodriguez v. San Antonio School District,[32] Coons observes:

> . . . It is clear that the courts would never have reached the stage of citing Kenneth Clark or Christopher Jencks unless they had already made a lusty normative leap unaided by anything more than their empirical values. These specimens of research were relevant only because judges had already accepted some notion of human equality as a value to be incorporated in the process of judicial rule selection.[33]

The task involved in the search for standards or values on which educational policies are to be founded

is clear. Whether one is a judge, a lawyer, a philosopher of law, or an ordinary layman intelligent and concerned enough to examine the bases of legal rules and principles, the task is one of venturing into the realm of ethics or moral philosophy.

V. SOME STANDARDS OR JUSTIFICATIONS.**

Student entitlement to rights normally available to adults only has been asserted for different reasons or with various justifications which may be viewed as standards to be met in the treatment of the young. Because they are frequently appealed to in current literature, there is a need to discuss them even if only briefly, in order to show their inadequacy.

A. The Student as A Constitutional Person. Naturally enough, the judgements rendered by the highest judicial body which interprets the consitution represents the most respected justification of or standard for student rights. The Canadian Supreme Court to this date has not ruled on the constitutional status of students. This, however, has not stopped Canadian educators from adverting to the American situation for precedents, believing that Canadian students are no less entitled to constitutional rights as American students.

The U.S. Supreme Court, with Mr. Justice Fortas as its spokesman, confirmed uncompromisingly in Tinker that "Students in school as well as out of school are 'persons' under our Constitution." As such, they are "possessed of fundamental rights which the State must respect."[34] Foremost among these rights is, presumably, students' freedom of speech. As Mr. Fortas saw it, that neither teachers nor students "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" had been the unmistakable holding of the Court for almost fifty years.[35]

These declaration, however, may not be as decisive as it seems. Two considerations may be noted in this regard. (1) Despite Mr. Fortas's claim that student rights had been recognized for about fifty years- at least in relation to free speech, the point remains disputable. Mr. Justice Black, dissenting from the majority decision, emphatically denied his colleague's contention. And he might very well be right. For a close look at some of the cases cited by Mr. Fortas in support of his new doctrine seems to bear Mr. Black's denial.[36] With due respect, we may eye Mr. Fortas's claim with some skepticism. The fact seems to be that, as Hon. Lois Forer pointed out, although the Supreme Court passes on some 2,500 cases and decides on the

merits of approximately 400 cases a year, it was not until 1966 in Kent v. United States that the Court ruled on a case explicitly raising the constitutional rights of a child. As she observed, prior cases involving children were not addressed to the question whether they, in contradistinction to adults, are entitled to the protection of the Bill of Rights. Even In re Gault (1967), she noted, did not signal a radical change in jurisprudential theory.[37]

This is not to say, lest misunderstanding follow, that legal principles and rules imbedded in case law ought not to be discarded ever. The Supreme Court has fashioned social and political policy in many areas, Dworkin's negative views about judicial discretion notwithstanding.[38] And, despite the controversy that attends the question of judicial restraint or activism,[39] and despite much criticism of activism in the Court such as Warren's,[40] the good wrought by judicial leadership has been incalculable.[41] This is to say, however, that Supreme Court decisions, especially where they break new ground, should present compelling justification. As Bickel put it,

> The Court must be able to demonstrate by reasoned argument why it thought the action right or necessary. It must try to persuade even those whom it may be unable to convince, and to persuade them at least of its own honest and detached effort to apply reason to the problem of society, and to

> solve them in a manner that is harmonious with a relevant tradition. For if the Court's decisions carry only the authority of its will, what claim have they to control the electoral institutions and the constituencies of those institutions?[42]

With due respect, it could be said that the Court's reasoning in Tinker is less than persuasive. Perhaps we should even regard this decision as incautious and unwise in its unqualified endorsement of the constitutional personhood of the young.

(2) That children or students are "constitutional persons" may easily be granted. However, it is not clear what this personhood entails in terms of rights that presumably they are entitled to exercise. Mr. Fortas himself explicitly stated that Tinker did not concern itself with the length of students' skirts, the type of their clothing, their hair style, deportment, or even with group demonstration- matters which, within certain limits, adult citizens have personal or political rights to. To be sure, not too long after Tinker, the Supreme Court injected more substance into the young's constitutional personhood by binding school authorities to the requirements of due process in suspension and expulsion cases.[43] But apart from the application of these rulings to other similar cases, the Court has not handed down an enumeration of the rights of students as persons under the Constitution. We must then take Mr. Fortas's

word for it- that Tinker limits itself to pure speech. Consequently we may then wonder whether youth rights are indeed co-extensive with those of adults. There seems little doubt, however, that the Court cannot mean literally what it says, unless it is prepared to recognize children's alleged rights to vote, to run for public office, to enter into contracts, and the like.

The court undertakes a painstaking attempt in the Tinker decision to balance the exercise of free speech against reasonable regulation of student conduct by duly constituted authorities. While apparently valid, this attempt could easily divert our attention from the disturbing and naive assumption of parity between adults and young people in relation to their enjoyment of rights. In view of the established legal/ constitutional, social, and moral distinctions between adulthood and youth, assumption of parity cannot be justified merely by sleight of hand or rhetorical pronouncements. Could the Court seriously maintain, as a result of this assumption, that now children and students (who used to be regarded as minors) could claim the passing of legislation which would abolish restrictions on their capacity to enter into contracts (like marriage!), to vote, to run for public office, to drive, to have access to intoxicating liquor or pornographic materials,

and the like?

As a creation of judicial discretion exercised by the U.S. Supreme Court, the constitutional personhood of the young cannot claim much foundation in common law. Traditionally, children have been viewed as minors, with all the legal, social, and moral incapacities that the term implies. At least during the last few centuries, children have not been regarded as full-fledged members of the body politic or as deserving of rights accorded adult members.[44] Thus, as recently as the Tinker case, Justice Stewart in his dissenting opinion insisted as follows:

> I cannot share the Court's uncritical assumption that... the First Amendment rights of children are co-extensive with those of adults.... (A) state may permissibly determine that, at least in some precisely delineated areas, a child ... is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees.[45]

Justice Stewart's view harks back to a long-standing tradition in western thought highlighted particularly by the champion of liberal philosophers during the 19th century: John Stuart Mill. Mill argued the doctrine that every individual is entitled to absolute freedom, subject to interference only when he poses a real harm or danger to society or others. Nevertheless, he thought it "hardly necessary to say that this doctrine is meant to apply only to human beings in the maturity of their

faculties." He went on to say: "We are not speaking of children, or of young persons below the age which the law may fix as that of manhood or womanhood. Those who are still in a state to require being taken care of by others, must be protected against their own actions as well as against external injury."[46] This conviction is carried over in the distinction between juvenile justice and penal justice, where a delinquent is viewed as posing a much different problem than the adult criminal. Rather than being dealt with as an offender, he is regarded as one in a condition of delinquency and therefore requiring help, guidance, and proper supervision.[47]

We might say that the Tinker decision is a futile attempt to read into the Constitution what is not there. Its declaration that children are constitutional persons possessed of First Amendment freedoms is not part of a tradition but a departure from it. Unfortunately, for such a departure, the Court does not offer persuasive justification. For a satisfactory one, we will have to search elsewhere.

B. The Student as a Human Person. That children or students are human persons or people has been a most persistent and catching battlecry for advocates of youth rights. Such writers as John Holt[48] and Richard

Farson[49] have capitalized on this idea to popularize their views about the entitlements of the young. Central to them is the claim that "the rights, privileges, duties and responsibilities of adult citizens (should) be made available to any young person, of whatever age, who wants to make use of them."[50]

Advocates of youth rights founded on the personhood of the young differ, however, in their conceptions of a "person". Three such conceptions may be examined to determine their adequacy as justification of the rights claimed.

(1) The classical definition of "person" traces back to Boethius who, in the early part of the Sixth Century, defined a "person" as an individual substance of a rational nature. The Archbishop of Liverpool elaborates on it as follows:

> "We normally regard a person as the ultimate subject to which action and decision can be attributed, implying that the person has complete self-command and that he is the master of his own action....
>
> ...The human person being aware of his own self-identity, aware too that his actions are attributable to himself as his own, accepts responsibility for them and recognizes the rights and duties that flow from this self-possession.[51]

Strenghtened by Kant[52] and popular in philosophical circles even at the present time,[53] this notion of a person obviously cannot serve as adequate justification

for children or student rights. Evidently, the young do not possess the requisites for rational thought and action which constitute personhood in the classical sense. Of course this may be disputed. Some have tried to use psychological findings to demonstrate that mentally or cognitively there is little, if any, to differentiate a seven-year-old from a full-blown adult.[54] Much is also made of the claim that, increasingly, the young are exposed to the media and to cultural influences that facilitate mental maturation of the young. Presumably because the young mature faster than they used to, we are no longer justified in withdrawing from them the exercise of rights granted to adults. As child advocates like Holt insist, the application of a double standard is unfair to the young. Henceforth, we ought to reverse the presumption of incompetence on their part on the ground that we have seriously underestimated their abilities, on the one hand, and that we have overestimated the quality and extent of paternalistic help we could provide them, on the other hand.

Unfortunately, even if it were true that children mature faster in our society, the argument does not justify the indiscriminate granting of freedoms or rights to the young. All it could allow is the lowering the age of majority limiting access to such rights.

Yet even this more modest conclusion should be taken with caution in light of the available studies based on the views of Kohlberg.[55] If it is true that it is only during the latter part of adolescence that independent moral judgements are resorted to, then there can be genuine doubts about students' readiness for rights or freedoms. It is quite revealing that Skolnick, herself sympathetic towards the elimination of distinctions between the old and the young, admits as follows: "Children do have further to go to achieve adult levels of competence in 'advanced' technological societies than they do in small, subsistence-level ones."[56] Though mentioned usually as an aside, this admission seems to be of great importance.

It does not help very much either to rest the child advocate's case on the claimed similarity in the psychological processes of the young and the mature. For whether their psychological processes are similar or not, these processes are themselves not the significant factor in competent, rational thinking. What matters, rather, is the possession of the capacity to employ the rules of correct or valid thinking; to enlist in one's deliberations needed varied considerations and relevant insights that only experience can provide; and to hold at bay one's surging impatience and rashness so characteristic

of the young. It is in relation to the possession of these capacities that the inferiority of the young, in general, can be found. Indeed some children show great maturity for their age in this regard. However, any generalization about the young's competencies to think and act rationally is hardly credible or compelling when based on instances of some precocious children.[57]

(2) The person as a centre of needs. Many child and student advocates concede the young's inability to participate as full-fledged members of society. Yet they are unwilling to accept the traditional view of the young as nothing much more than chattels of their own parents- chattels that can be handled as they wished. Rather, they project the image of children as having integrity of their own. A child is then shown to be by himself a centre of wants, desires, or needs which ought to be satisfied whether he can articulate them or not.[58] As the Task Force of the Canadian Council on Children and Youths put it, "Since they cannot themselves meet their needs, children have the right to expect society to meet them. Accordingly, adults in the community have the concomitant duty to see that this right is recognized and society's responsibility towards children adequately discharged."[59] For the Task Force, this responsibility lies in providing for, among others,

children's needs for economic support, health care, protection, and education.[60]

The concept of person in this view has certainly some merits missing in the previous one. Once children are shown to lack rational capacities, the view that children are rational beings fails to justify even the basic rights which we think intuitively that they are entitled to, such as the rights to reasonable care and protection. Morally, we find it offensive to say that children- and for that matter, psychotics, neurotics, alcoholics, and the senile- are devoid of any rights just because they are non-rational. Despite their disability, we believe that as persons, they are no less entitled to enjoy meaningful and joyful existence, and thus to the provisions needed to live that life. There seems little doubt that much advocacy in the present draws from this belief, irrespective of whether it derives from a religious or humanistic origin.

Merely noting a disturbing confusion between wants, desires, and needs,[61] and centering simply on the much more viable claim of needs in comparison with the first two, we must note that the concept of need is itself a sticky one. There are two real problems. One, it is not clear what human needs are. Two, even when human needs are known, it is not obvious that they all ought to be

satisfied.

A brief survey of literature on human needs surely reveals the variety of views about what these needs are.[62] Nevertheless, it is possible to follow McCloskey's lead in suggesting that "human needs can usefully be explained and appealed to only against a background belief in the existence of a common human nature and specific individual nature with certain inherent potentialities (as distinct from mere possibilities), the development of which involves the satisfaction of needs."[63] As he sees it, needs talk involves reference to a natural good existence and development as human beings from potentiality to actuality. Thus if there were no such good natures, we could not indicate human needs.[64]

McCloskey's analysis seems to be a step in the right direction. Not only does it highlight the necessity of referring back to human nature in finding out human needs; it also insists on the normative character of our view of human needs, conceptually related as it is with the development of human nature, and development itself conceived as desirable change. This move goes a a long way towards bridging the gap between the "is" of human nature, and the "ought" presupposed by the claim to certain rights.

Unfortunately, one's view of a desirable human

development could easily be linked with an objectionable static model of man. Traditionally exemplified by the development of an acorn into an oak, this model views man as a passive organism that reacts to, rather than acts on, his environment.[65] In contemporary thought, this vision of man seems to be represented in an extreme form by B.F. Skinner who asserts, in sum, that man is nothing much more than the creation of the forces or environmental factors affecting him. The nature of man, because static and determinate, can be discovered; consequently, his needs can be ascertained. Once known, these needs can be provided for, and his desirable development insured through the systematic manipulation of his environment. As Skinner puts it,

> He (man) has failed to solve his problems because he has looked in the wrong place for solutions. The extraordinary role of the environment opens the prospect of a much more successful future, in which he will be most human and humane, and in which he will manage himself skillfully because he will know himself accurately.[66]

The static model of man has been subjected to intense and insightful criticism elsewhere.[67] Suffice it to say that this model, whether in the Skinnerian or in the more traditional Aristotelian attire, is to be rejected because of a restrictive, unfaithful image of man. As such, it gives a narrow perspective about the variety of human needs. Thus, noting that needs comprise only a

limited aspect of self-development and self-perfection, McCloskey continues to say:

> Liberals have been able to neglect to refer to needs to the degree they have because they have been concerned with something much more comprehensive than merely development of potentialities into actualities. They have been concerned with self-activity leading to the creation of goods, the extension of knwoledge, rational belief, culture, artistic creation, and the like.[68]

Unless one is willing to close his eyes to these notable goods in human development, and thus to the needs that they entail, the static image of a person, together with its limited set of needs, should prove unacceptable. But even if this notion of a person is granted, a crucial problem remains. For given that human needs frequently conflict among themselves, which needs ought to be given overriding preference?

(3) The person as a self-actualizing being. The preceding conception of a person, if attibuted to children, will justify a manipulative, even authoritarian treatment of the young insofar as their guardians are presumed to know what the young are to develop into. Thus, unless and until the developing individuals are determined to have achieved their full development, the guardians and societal institutions may justifiably regulate their conduct.

All this is anathema, however, to an increasing number of humanistic advocates and educators. For them,

a person is one who is an active seeker after mastery over social forces and after the expression of his highest intellectual, aesthetic, and other potentialities; he is not merely a passive accommodator to the social forces pressing on him. Conceptualized and popularized by humanists like Maslow[69] and Rogers,[70] this notion of a person as a self-actualizing being emphasizes the continued change and growth through experiences during one's lifetime. Everyone, humanists contend, has the capacity for creativity and for spontaneous and natural behavior. Unique unto himself, he is capable of creating his own purposes and of projecting himself into the future.

This notion stresses the comprehensive nature of human needs. In contrast with the preceding notion, it divides human needs into basic and growth needs. In Maslow's words,

> Growth is seen... not only as progressive gratification of basic needs to the point where they "disappear", but also in the form of specific growth motivations over and above these basic needs, e.g., talents, capacities, creative tendencies, constitutional tendencies.[71]

This statement should allay reservations like that of McCloskey's. This should also indicate the tendency of humanistic educators and child advocates to call for institutions that would give children as much freedom as possible.

Unfortunately, this humanistic orientation is imbedded in an old but questionable view popularized by Rousseau. The view is that each individual has innate, inborn goodness; that it is the environment which stunts or distorts its natural development. Thus, a desirable development can be seen only in terms of an unhampered unfolding of individual talents and tendencies. Whether in the wider society or in the school, the task of the guardian or the teacher is to free and unleash curiosity, to permit individuals to go charging off in new directions dictated by their interests, and to open everything to question and exploration.[72] It is no accident that humanists have opted for open or free schools exemplified by A.S. Neill's Summerhil.

The merits of the humanistic orientation and its consequent espousal of open education have been debated extensively.[73] Only three points need to be mentioned in this respect. First, insofar as humanists may be claiming competencies in children to participate in the workings of the body politic, their claim is subject to criticisms we have levelled against the first conception of a person. Second, insofar as it is admitted that as immature individuals children have potentialities that need to be developed, what is called for is their initiation into and apprenticeship in those activities that eventually will transform potentialities into actualities.

This requires not the elimination of authority and of rules needed to facilitate such initiation and apprenticeship, but adult exercise of sympathetic and enlightened authority.[74] Finally, no matter how much we may value an individual's free development, it still remains undebatable that such development cannot be allowed to interfere with the development of others. Thus, individual freedoms will have to be circumscribed.[75] This, in fact, is what the law is all about.

Indeed, what the law seeks to do is to maximize freedom for every individual, whether developing or fully rational, in society. At the same time, it strives to provide for the needs of everyone. But in the face of conflicting exercise of freedom and of competing needs, we have no choice but to resort to higher principles or values in an attempt to resolve such conflicts or competition. Consequently, it is clear that a mere appeal to the value of persons (in any or all of the senses just discussed) does not quite do the job.

C. The Rawlsian Standard.

In the last few years, attempt has been made to justify an extension of adult rights to the young by showing that the latter are covered by the application of the principles of justice developed by a contemporary philosopher, John Rawls. Worsfold, for example, insists

that an interesting and adequate framework for student and children's rights can be constructed in the context of the Rawlsian theory.[76] To enable us to evaluate this view, we have first to understand the Rawlsian theory.

In his ambitious and remarkable book, A Theory of Justice, Rawls endeavors to establish moral principles sub specie aeternitatis. His strategy is to envision individuals engaged in a social contract under a veil of ignorance. Seeking to achieve the principles that will govern their pursuit of life goals, they are presumed to labor under limitations in knowledge. Thus, they do not know (i) their social positions, talents, and natural bents; (ii) their conception of the good, including their sources of pleasure, their aspirations, and their religious beliefs; and (iii) the economic development of the society.[77] They nevertheless are presumed capable of arriving rationally at Rawl's principles of justice. In final form, the Rawlsian principles read in part as follows:

> First Principle
>
> Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.
>
> Second Principle
>
> Social and economic inequalities are to be arranged so that both are:
>
> (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and

(b) attached to offices and position open to all under conditions of fair equality of opportunity.

First Priority Rule (The Priority of Liberty)
The principles of justice are to be ranked in lexical order and therefore liberty can be resticted only for the sake of liberty.[78]

Rawls is quite explicit that where the claims of liberty are not yet satisfied, other primary goals such as income and wealth, opportunity and self-respect, do not enter the picture. He does make one concession, though. When social conditions do not allow the effective establishment of the right to liberties, restrictions can be acknowledged. But only temporarily."The denial of equal liberty can be accepted only if it is necessary to enhance the quality of civilization, so that in due course the equal freedoms can be enjoyed by all." When all the necessary conditions are met, "it becomes and then remains irrational... to acknowledge a lesser liberty for the sake of greater material means and amenities of office."[79]

Plainly, however, one cannot make a compelling case for the priority of liberty in the general sense of being able to do whatever one wants to do.[80] Thus it is no surprise that Rawls centres his discussion on more or less specific basic liberties. His enumeration of them is as follows:

> The basic liberties of citizens are, roughly speaking, political liberty (the right to vote and to be eligible for public office) together with freedom of speech and assembly; liberty of conscience and freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law.[81]

Rawls' argument for the priority of these freedoms is that under favorable circumstances, only the less urgent material wants remain; that the obstacles to the exercise of equal liberties decline; and that a man's fundamental interest in determining his own plan of life becomes primary. Abstracting from the particulars of his plan of life under the veil of ignorance, the rational conclusion for him is preference for basic liberties.[82]

This argument is flawed, however. That it would be rational for individuals in the original position marked by the veil of ignorance to commit themselves to liberty as against wealth or other values remains unpalpable, as Barry has tried to show.[83] In any case, even if an individual were to decide that he needs a maximum of freedom, it does not logically follow that it would be rational to choose, in the original position, principles of general application for the distribution of as much as possible of this primary good.[84] That, for example, an individual thinks it is good for him to have two cars does not imply that it is rational to think that it is good for everyone else to have two cars similarly. This conclusion will

follow only if a state of affairs or a society in which having two cars is desired or is desirable is presupposed. The same applies to liberties. Although one might rationally prefer much freedom for himself in the pursuit of his life plans, he may not logically infer that everyone else should have as much, unless he already presupposes a society where equal and maximal liberty is taken to be significant. Clearly, however, Rawls is not allowed to stipulate a particular type of society. The veil of ignorance prohibits his doing so. That Rawls can conclude the way he does is symptomatic that he has used, to quote Schaefer's rather strong phraseology, the "contract rhetoric" to mask the fact that "his principles rest on little more than unexamined biases."[85] In the absence of an envisioned society, or of an adequate description of "the parties to the original position in a way that corresponds to human nature,"[86] it should prove almost impossible to formulate appropriate principles of morality that will suitably apply to practical life.

That not even such a powerfully-argued position as that of Rawls could establish unquestionably the priority of liberty over other values should suggest caution in its use to justify extensive freedoms for individuals. Yet Worsfold heartily endorses Rawls's position. Having accepted it, he then attempts to show that for Rawls,

"it is more reasonable to assume that children <u>are</u> competent to perform this initial task (social contract), at least in part, rather than risk the logical alternative to it; that they shall be denied the possibility of pursuing their own just ends."[87] Actually, both parts of this assertion is mistaken. (i) Contrary to Worsfold's assumption about Rawls's presumption of children's competency, it is clear that Rawls can hardly imagine the young engaged in a <u>rational</u> search for the principles of justice in social contract with adults unless he already presupposes equal treatment for them. This is, of course, to beg the issue. Rawls has, for the original position, men and women who are ordinary in most respects but who <u>can</u> rationally choose principles of justice. It is tempting to suggest that children should qualify for participation in social contract- after all, have adults not been reduced to child-like status under the veil of ignorance? But levity aside, this temptation should be resisted. Despite the veil, the participants are presumed to know, among others, the general facts about human society, to understand political affairs, and to grasp the principles of economic theory, the basis of social organization, and the laws of human psychology.[88] Stuffs, one can well observe, which not all adults, not to speak of children, are in possession of. So children cannot be

presumed capable of participation in the initial position. The fact that Rawls explicitly discusses paternalism is an indication that for him, we just cannot do so.

(ii) In light of society's documented, not infrequent maltreatment of children,[89] one might worry that their lack of participation in social contract could result in the disregard of their interests or just ends. Yet given this possibility, one is not left with either-or choices as suggested by Worsfold: either children participate in the contract and consequently secure their interests; or they are left out and thus abandon any hope of securing such interests. Indeed, Rawls himself resorts to a third available alternative, namely, paternalism. This practice conceptually involves one's doing something to or for another intentionally for the latter's own good. If shown acceptable, as some philosophers have successfully done,[90] Worsfold's either-or approach clearly becomes suspect.

Irrespective of the merits of paternalism- which justifies adult determination of what the immature may do by way of rules and impositions no less than positive provisions- Worsfold's choice of the Rawlsian position in support of children and student rights is unfortunate. This is because children, <u>as children</u> (i.e., as presently incapable of rationality), are ruled out necessarily from participation in Rawls's original position. Participation

in the social contract requires rational participants-rational adults who are acting from self-interest. This cannot but result in adult-oriented principles, as exemplified by the priority of liberty. Clearly, the basic structure of Rawls's theory takes no account of non-rational individuals as participants in social contract. However, no satisfactory theory can afford to provide for them within such a theory. Thus Rawls does try to bring them within the ambit of his theorizing. Unfortunately, he does so with the use of two conflicting strategies. First, as we have noted, he accepts the practice of paternalism. Such acceptance, he stipulates, must satisfy three criteria:

> (i) We must be able to argue that with the development or the recovery of his rational powers the individual in question... will accept our decision on his behalf and agree with us that we did the best thing for him;
>
> (ii) Paternalistic intervention must be justified by the evident failure or absence of reason and will; and
>
> (iii) It must be guided by the principles of justice and what is known about the subject's more permanent aims and preferences, or by the account of primary goods.[91]

Criterion (ii) should satisfy any reasonable individual. Surely, if one can rationally think for himself, only good enough reasons can be accepted to justify over-riding his convictions and decisions. Criteria (i) and (iii), however, merely reinforce the

the difficulty under which Worsfold labors. Obviously, (i) acknowledges that immature children still have to mature and internalize rational processes before they can be regarded as capable of determining what is really to their interest. Criterion (iii) operates only if the Rawlsian principles, qualified by the priority of liberty, are already admitted. This, as we have shown earlier, is a premature, contentious conclusion. Moreover, Rawls's paternalistic "consideration of what is known about the children's more permanent aims and preferences" is ambiguous. Does it involve considering the relatively permanent aims and preferences of children <u>as children</u>, or as children who will live adult lives? His treatment of childhood as a temporary incapacitation to be grown out of as soon as possible suggests the latter. Since he speaks of the adult-oriented notion of primary goods in this criterion, it looks as if this is the right conclusion.

But Rawls also tries to bring children within the ambit of his theory by suggesting that our considered judgement would indicate children's possession of basic rights. Moreover, he notes, encompassing children as beneficiaries of his principles is consistent with the choice of his conception of justice in the original position. Yet, this is one of Rawls's weakest moves in his book. As he himself concedes, this is no argument

at all.[92]

Rawls is quite right that our considered judgements would rule in favor of granting rights to children. But what rights? To accept his principles dominated by the priority of liberty is to assume the soundness of his theory- an assumption which he fails to justify. Can he then appeal to the idea of consistency? Evidently not. How could he grant children those rights or freedoms fitted for rational adults when he admits the need for paternalistic treatment of the young?

The hopelessness of the endeavor to provide the young with adult rights is reflected in Rawls's last-ditch argumentation. He insists that children have capacity for moral personality which is the basis of equal protection and enjoyment of his principles.[93] But he defines the notion of "capacity" to fit his purposes. "Capacity" for him consists not only of actual ability, but also of potentiality, to possess some rational life plan and a sense of justice. Thus children possess moral personality in this sense, and hence his principles apply to them. But clearly, this strategy is incredibly strained, if not downright preposterous. It is as if one were to say:"This acorn will be an oak some time, anyway, so let us make lumber of it now."!

VI. A PREFERRED JUSTIFICATION: THE UTILITARIAN STANDARD.

The Rawlsian theory is intended, in part, to bring the theory of utilitarianism to its final resting place. Apparently, however, such intent is premature. Presumed to be riddled with irremediable theoretical and practical illnesses, and to be moribund after more than a century of prominence,[94] utilitarianism has nevertheless seen a real, vigorous revival in this decade.

Because Rawls takes great pains to demonstrate the inadequacy of utilitarian theory, it is only fitting to observe that, at least in terms of youth rights, utilitarianism may have more to offer than his theory. The reason is not far to seek, it seems. Whether its ultimate goal is happiness, welfare, or whatever, utilitarianism purports to secure it for the greatest number in society. The greatest number, ideally, is not the majority or the largest fraction of the population. Rather, it is the whole of it. Contrary to what critics say, the utilitarian is compelled, as far as circumstances and possibilities allow, to aspire for the good of everyone- normal or abnormal, young or old, rich or poor. Thus under the theory, children ought to be regarded as possessors of prima facie rights to whatever the good is, be it the right to the ultimate good of happiness, or the right

to such others as will instrumentally secure this goal. In utilitarianism, one does hot have to make out a case for the rights of children. The greatest happiness (or welfare or good) for the greatest number principle already implies children's possession of rights, at least in a prima facie manner.

In utilitarianism, therefore, no inequality in entitlement to rights is justified without relevant and valid reasons. Insofar as human beings share common humanity, not one of them may be denied satisfaction of what may be referred to as welfare rights: to food, clothing, fair treatment, shelter, due process, equal protection of the law, and the like. Children, no less than adults, are entitled to them. Whether they are also entitled to so-called "special rights" (such as claimed rights to parental love and affection, to grow in an appropriate environment, to be born a wanted child, etc.)[95] may be disputed. I am inclined to believe, however, that at least some of them are classifiable under the right to fair treatment and are therefore possessed by children indeed. Our present concern, however, is not to argue for them.

A. What Is Utilitarianism?

The history of utilitarianism reveals it to be a theory in constant evolution. In response to discovered

difficulties, utilitarians try continually to refine, modify, or qualify it. In this study, however, we shall simply sketch its main outlines. Since our concern is merely to establish the theory's credibility as a basis for educational policy making, we shall not discuss its many intricacies. Hopefully, however, a coherent but eclectic utilitarianism- perhaps we may call it a reconstructed utilitarianism- will emerge.[96]

(1) Utilitarian assumptions. Utilitarianism belongs to the naturalistic, teleological tradition in ethical theory. As such, it makes certain assumptions. (i) It assumes that any question of value is to be resolved in the context of the desirablity of human life. That is, human life- its existence and perpetuation- is unquestionably desirable. Thus any taking of life, whether of the individual or the human species, is assumed to be an outright evil. This does not mean that under no circumstances may an individual human life be terminated. But it does mean that it may be done only where the other alternatives involve the loss of more lives. This assumption should be etched out prominently because critics of the theory mischievously infer the misleading conclusion that utilitarianism can be used to justify a Hitlerian massacre of human beings for a higher good. Utilitarian commitment to human life- whether it belongs to the born

or the unborn, to a man or a woman, to a Black or a White, etc.,- should be underscored.

(ii) Utilitarianism assumes that values are not separable from human nature; that is, that the nature of the human good is based on human nature.[97]

(iii) Utilitarianism assumes that human nature is known to us to be capable of development, fulfillment of which requires provision for individual needs. Such needs may be seen in terms of Maslow's basic and growth or higher needs.[98] Furthermore, it assumes that human development is set in a social context. Again, this assumption needs to be stressed because of the critic's inference that the theory justifies slavery and similarly objectionable practices. Because slavery can be shown contrary to the development of the human being, the critic's objections on this point is clearly mistaken.

(iv) Utilitarianism assumes that rationality is an unqualifiedly valuable tool for the pursuit of human good. As such a tool,[99] it enables man to see the nature of the good for him as a human being in a social context. To put it in another way, it is one's rationality that enables him to assess his desires and needs and to determine which among them are genuine or are deserving of a priority. With this in mind, the utilitarian considers rationality to possess primacy over all other means or instrumental

goods needed for achieving the ultimate human good.

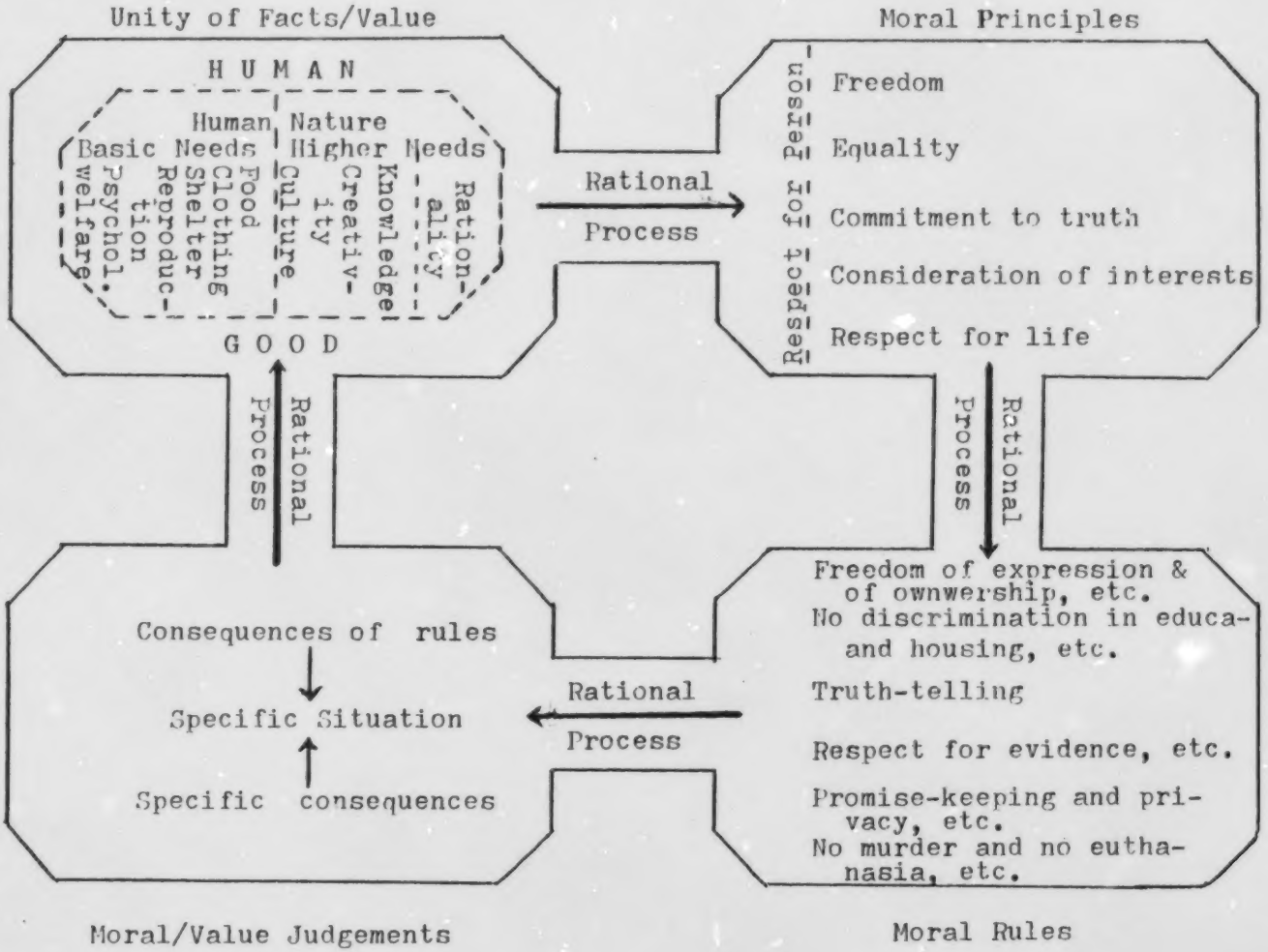
(2) The utilitarian doctrine. Utilitarianism centres on the principle of the "Greatest good for the greatest number." Taken in the context of our utilitarian assumptions, the principle states that ideally our decisions, actions and tendencies ought to promote the good of human beings. Naturally, the formulation easily invites some crucial questions, two of which are as follows; (i) What is the greatest good assumed in the principle? (ii) To what extent are we obliged to pursue the greatest good for the greatest number?

(i) Mill speaks of utilitarianism more particularly in terms of happiness- one which is in itself quite abstract. Following Bentham, however, he speaks of the maximization of pleasure and the minimization of pain. The latter concepts (of pleasure and pain) have aroused concerted criticism. Allegedly, desired pleasure is not necessarily desirable and, in any case, autonomy of ethics, vis-a-vis matters of fact does not allow the logical derivation of values from men's desires. The utilitarian theory thus presumably commits what is now called the naturalistic fallacy. Fortunately, such a charge against naturalism has been shown to be unwarranted.[100] For the purpose of our study, all we need do is to propose a schema to indicate the main features of

utilitarian theory. Such schema will reveal the conception of "good" being suggested here. (The schema is presented on the next page.)

Several points need to be mentioned in relation to the schema. (a) This reconstructed version remains faithfully teleological. It insists on the standard view that the criterion of the rightness or wrongness of an act or rule is whether it does or does not contribute to the attainment of an end in view. (b) Instead of the concept "happiness", "human good" has been designated as the ultimate end or value. The intent is to avoid the current tendency to associate utilitarianism with the inevitable subjectivity of pleasure, an idea easily evoked by the word "happiness". Moreover, "human good" is employed deliberately because it has an objective connotation and because it lends itself to more objective evaluation. It is assumed, of course, that anyone who has met the needs of human nature is a happy person- or at least happier than one who has not. Thus, as an end, human good is obtained to the degree that human needs, whether basic or higher, are provided for. Our reconstructed version also suggests that human good is achievable through the possession of different things that satisfy human needs. It therefore tries to reconcile hedonistic and ideal utilitarianisms. On this version,

A Reconstructed Utilitarian Schema:



human good depends on experiencing pleasures and avoiding pain (hedonistic viewpoint); nevertheless, such pleasures (or pains) cannot be separated from a variety of activities and experiences- intellectual, aesthetic, spiritual, etc.- which produce the pleasures (or pains). This ideal utilitarian viewpoint becomes inescapable, considering the variety of human needs and thus the variety of experiences that will lead to the pleasurable satisfaction of such needs. It is assumed, of course, that the so-called "higher needs" build on "basic needs"; that, ordinarily, the latter will have to be satisfied first to achieve the former; but that, nevertheless, fullest human development which is the fulfillment of the human good will require provision for the achievement of the higher needs. (c) The schema also shows that no matter how much divorced they are in the minds of analytic philoscphers, human good and human nature are inescapably intertwined. Values arise from the human condition. Man has certain needs to satisfy. His use of reason has resulted in his discovery, in concert with his fellow men, of certain abstract principles and more specific rules to govern his quest for satisfaction of his needs. Consequently, the so-called autonomy of ethics, or the naturalistic fallacy, does not make much sense. (d) The proposed view is in a sense

not opposed to the idea of respect for persons if by a "person" is meant one who is a centre of needs, of valuation, and of action. In effect, our schema says that the prima facie principles (e.g., freedom, equality) that have evolved in our moral existence as human beings are the generalized guidelines by which respect for persons as human beings might be expressed. In the final analysis, they are merely (but of great significance nonetheless!) procedural principles, not ends in themselves, which we ought to follow if we are to attain human good. This is indicated by the fact that, for example, talk of freedom in a generalized sense seems to offend our intuitive moral sense when it is suggested that everyone should be free although such freedom will obviously result in great harm to other human beings. (e) In the pursuit of human good, man encounters specific situations and finds himself confronted with having to make concrete decisions. The fact that human beings have come up with prima facie principles makes it imperative that one should conform to them. What this means in practice is that one's judgement in a given situation is bound by certain more or less specific rules that apply the prima facie principles in particular situations. Insofar as the moral rules are the faithful, appropriate expression of the relevant principles in a given situation, the rules take on more

than simply rule-of-thumb character. Nevertheless, a utilitarian is not bound to apply the rule without exception, and it is hard to understand why rule and act-utilitarians should be wrangling the way they do.[101] What really matters is that human good should be secured. Because the rules subscribed to grow as a result of human experience, and because such experience demonstrates that these rules effectively and appropriately concretize some prima facie principles, there is a presumption in favor of their being seriously adhered to in relevant situations. Yet no rational man can insist that the rule should be blindly followed even when it is clear that the objective for which it was developed will be compromised or hampered. As Mill himself should be interpreted, the utilitarian principle pertains more to the question of ultimate end rather than the means to that end.[102] If that is the case, the quarrel between act and rule-utilitarians is largely at waste of time and talent. (f) Despite the suggestion that utilitarianism admits to a variety of valuable pleasurable activities and experiences, our reconstructed theory might well accept a hierarchy of values in the manner of Rawls. In contrast with the Rawlsian position, however, equal liberty or freedom does not occupy undisputed primacy under our schema. Our view is that human reason may discover that the attainment of human good

requires the over-riding of the claims of the principle of freedom. In such a case, the curtailment of freedom should prove unobjectionable. If there is any bias in the theory herein presented, it lies in the priority of man's rationality not only as a component of human nature; not only as determinative of the process of moral reasoning; but also as the implicit framework of the human good. This is simply to say that under the theory, a good is not a human good if it cannot be rationally justified. Thus rationality is a prime, if not the prime, instance of human good. It should be noted that our theory countenances the prior importance of providing for man's most basic needs for life-maintenance such as food, water, and shelter. Without life, there is no rationality. But, by the same token, without rationality, there is no morality- no talk of values, of the significance of freedom and equality, and the like.

(ii) To what extent is human good to be pursued? Surely, the utilitarian prescribes the pursuit of the human good as far as possible without making the effort self-defeating. This has been a much misunderstood point in utilitarianism. Allegedly the theory allows such offensive practices as conditioning, manipulation, slavery, and the like to insure efficient attainment of man's goals. But clearly, for the utilitarian, such practices

are efficient only if it is assumed that the slaves or the manipulated themselves have no legitimate human needs that are denied by the practices. Surely this is an assumption which contradicts what utilitarianism stands for. Further, it must be noted that utilitarianism aims at the good of the greatest, not greater, number. If we are to follow the utilitarian dictum that every person is to count for one, then certainly the slave or the manipulated is to be counted in as one entitled to the satisfaction of higher needs.

But if this point can be countered, we are led to criticism from the opposite direction. Can we seriously maintain that we have obligation towards others who are remote in time and/or place? If indeed we have the duty to preserve the human species, do we have the obligation to provide for the succeeding generations of human beings? The utilitarian answer must be "yes!" and there need be no apologies made for this answer. It is no accident that utilitarianism before its decline served as a strong impetus for social reform.[103] There is no reason why it may not serve in that capacity again, for indeed it is only too obvious that we must counteract the self-centredness distorting the vision of many interest groups today. It is true, of course, that difficulties beset the practical pursuit of the utilitarian ideal.[104] Not the least of such

difficulties is represented by this question: Where the utilitarian ideal is not achievable under the circumstances, which is preferred by the theory- a global society where every group equitably shares a modicum of thinly-spread human good, or one where at least some groups enjoy an abundance of it even as the rest are left in scarcity?

No one can pretend that the problems have any easy answers. No existing ethical theory is free from problems that arise from the practical implementation of its own doctrines. A utilitarian is convinced, however, that his pursuit of human good based on human nature and his use of rationality in that pursuit offer the best approach that there is in guiding human existence.

B. The Utilitarian Theory and Student Rights.

1. Students and autonomy. Educators are increasingly under pressure to respond positively to children and student advocacy. Whether in Newfoundland or elsewhere, it is perceived more and more that the young have legitimate claims. To be sure, there is much to commend in this development. Accordingly one is heartened to see educators becoming progressively sensitive to rights claimed by or on behalf of students.

For the utilitarian, however, there is a real need to discriminate rationally among these claimed rights to make sure that providing for them or denying them does not

compromise the attainment of human good. Discriminating among these claimed rights will be facilitated by looking back to the ideas of Rawls.

Convinced that he has shown the priority of liberty within his theory of justice discovered under the veil of ignorance, Rawls goes on to conclude that freedom is the absolute framework for the pursuit of life. For him, once the principles of justice have been laid down under a thin theory of good, they become the permanent constraints not only in the pursuit of the good life but also in the exercise of one's autonomy. Now apart from committing us to some form of absolutism, Rawls believes, rather naively, that his principles can be firmly supported by the rational choice of people under the veil of ignorance. But why may individuals, once free from the veil of ignorance, and hence presumably released to think more rationally, not question Rawls's lexically-ordered principles? Would it be irrational if, in their self-determined rationality, individuals decided that they would prefer even a generous amount of selective restraints, provided that they can live in contentment and peace and pursue their considered interests discovered under the full theory of good?

For the utilitarian, it must remain open for society and individuals to determine not only the character of the good life[105] but also the framework within which that life

is to be pursued. Thus even if we accepted the Rawlsian principles, they can at best provide a provisional framework, still subject to future evaluation. And for that future evaluation, what would be needed is self-determined rational decision-making. Man's rationality, rather than the principles of justice, must the the court of last resort.

The need for rationality must prove incalculable. For this reason, the role that it must play in education or schooling cannot be underestimated or compromised. Quite unfortunately, this is precisely what a court decision like Tinker does, wittingly or unwittingly. This is because we have good grounds for believing that it is self-defeating to declare that children or students are constitutional persons and as such are possessors of legal rights to the numerous civil and political freedoms available to adults.

We have seen that justifying youth rights indiscriminately based on their constitutional personhood cannot be seriously sustained. But granting them freedoms has been justified in another way, as Mr. Fortas does in the Tinker case. By a certain twist of opaque thinking, it is assumed that adults cannot be expected to exercise their freedoms properly in a democracy unless as young people they were allowed practice in these rights in educational institutions. Perhaps this can be shown in the case of

swimming as an analogue. One presumably does not learn to swim unless he is thrown into the water. Mere learning of tips or facts about how to swim will not do. Yet, the analogy is flawed. For unlike in swimming where movement is the thing, the more important skill in the discharge of civil and political rights- to vote, for example- is not the act of going to the polling booth and marking X on the ballot. Rather, it is the cognitive task of sorting out election issues and determining which candidate is more likely to secure resolution of such issues.

The exercise of voting rights is, in fact, typical of many rights we have, including that of free speech. Their physical components, even their form, are fairly simple and could be learned in due course. Even the exercise of the right to harangue the public demagogically, given average intelligence, may not be too difficult for anyone to perform. In contrast, it is so much more demanding to develop disciplined thinking and to internalize a disciplined respect for rational discourse, both of which are essential characteristics of the individual needed for a truly operative democracy.

We may now see more clearly the dangers involved in an incautious affirmation of the constitutional, legal entitlement of the young to civil and political rights. The crucial element in preparing children for democracy

is not that of giving them every opportunity to go through the motion of exercising political and civil rights. Such motions are easy enough to learn. The more urgent, indispensable task is to have students initiated and developed along the lines of understandings and dispositions required of a Millian democrat: that is, an individual concerned not only with pursuing his welfare rationally but also with avoiding harm to others. The problem in a blanket affirmation of the constitutional personhood of the young is that it would allow the young to go through the motion of exercising political and civil rights even without necessitating the internalization of those skills and dispositions that would result in the responsible discharge of those rights. It is very instructive that in Tinker, for example, Mr. Fortas did not seriously inquire into the capacity of the student-petitioners to understand the war issues and the full ramifications of their behavior. For surely, the Court did not have to. Once a political or civil right is granted, it becomes immaterial whether one discharges it intelligently or not. A constitutional declaration of legal rights transports children, with its full impact, into the real world of democracy where on the whole the "market" model prevails. No longer are students to be regarded as learners or apprentices. Rather, they gain

the status of full-fledged citizens and participants in a society where arrangements and relationships result from a test of strength and desire. Students are then allowed to pursue their viewpoints in a context where power and wants are the operative principles. Henceforth they may express their concerns focused on their wants and desires rather than the common good. Now their working tool need not be reason but bargaining power.[106] Needless to say, consistent application of a constitutional declaration of student rights to political and civil freedoms will abet this unfortunate model.

2. Locating youth rights within human rights. Our earlier discussion has pointed to the conclusion that as human beings, the young are entitled to certain goods, even as it shows that their entitlement does not completely coincide with that of adults. This conclusion is translatable into the language of rights. It is true that there is lack of agreement on the notion of "right".[107] This diagreement lies on at least two aspects: (i) on what the basis or foundation of rights is, and consequently what these rights really are. Naturally, claimed rights are shown to be not rights at all if they are shown not to have any basis or justification; (ii) on how rights may be sanctioned or enforced. Despite the disagreement on these respects, it is nevertheless true that at the core of any notion of right is entitlement. No matter what its

basis is, or however it is enforced, and whether or not it should be claimed and claimable before it can be regarded as a right, central to it is an entitlement. It, simply, is an entitlement which gives rise to expectations about the behavior of participants in a relationship where the right is said to exist. In this light, to say that an individual has a right to food, for example, is to say that he is entitled to it for justifiable reasons, and that thus he may expect of some others such actions (commission or omission) that will eventually enable him to have the food. As our analysis shows, entitlements are justifiable in terms of human needs which define the human good.

The entire range of human rights may be divided into two kinds: (i) option or freedom rights; and (ii) welfare rights.[108] This distinction cuts across other classifications of rights: for example, according to their mode of establishment, such as legal and moral rights; or to their content, such as economic, religious and political rights.

Option rights centre on freedom and the idea of sovereignty. As Golding suggests, these rights cover sovereignty over persons and things and in regard to oneself. One has a right to do various things with one's self and property, <u>on the assumption</u> that as a rational agent, he will do so reasonably. This class of rights

may be bounded by the sovereignty other persons may have over one, by the duties he has towards others, and by his duties toward himself. But, "outside of these boundaries ... (he) may do things at ... (his) option."[109] From the standpoint of the utilitarian, there is entitlement to these rights because the achievement of individual human good is best facilitated by possession of freedom on his part.[110] On the other hand, central to welfare rights is the notion of equal or just entitlement to the "goods of life which are conferred by the social ideals of the community."[111] As such, they do not rest on one's ability or even potentiality to exercise sovereignty. Rationality, defined as the possession of the reasoning capacity for autonomous determination of one's choices and actions, is not required for the enjoyment of these rights. Rather, one's entitlement to them depends on what society perceives as just claims to certain human needs.

Are students to be granted option and welfare rights to such an extent that the law ought to establish them fully by court intervention in the educational process or by statutory provisions? Should we view as justified the court intervention in education so prominent in the American scene? Should the American example serve as a model for the Canadian situation? The answer, we must conclude, depends on the kind of rights being claimed.

(i) Student entitlement to welfare rights. Given that the attainment of human good requires rational individuals, and given that this good calls for the satisfaction of human needs, the young's entitlement to welfare rights seems straightforward.[112] An illustrative short list, in particular, of student welfare rights in schools may be offered as follows:

a. The right to the means- facilities, materials, and processes- needed for the development of rationality and other desirable human characteristics;

b. the right to due process;

c. the right to reasonable physical care and protection;

d. the right to reasonable emotional and psychological care and protection; and

e. the right, in general terms, to fair treatment such that students are not discriminated against by reason of sex, color, race, social class, religion, and the like.

From the utilitarian perspective, court scrutiny of school policies and actions for possible contravention of student welfare rights must be welcome. Legislative action in the form of school acts must also be viewed as important. Clearly, that students have these rights should imply certain obligations that ought to be complied with by educational systems and their participants. In this regard, court decisions and statutory provisions outlining some due process procedures in suspension and

expulsion cases should be encouraged. In this regard, the relevant provision in the Schools Act[113] of the Province of Newfoundland must be seen as a step in the right direction. However, it does seem that the provision can be sharpened a little bit more. Perhaps it may be revised or amended further to require of Newfoundland schools those procedures similar to the ones imposed on American schools by the U.S. Supreme Court for short-term and long term suspensions. As could be easily seen, provision for even tighter procedures in the case of expulsion should be required uniformly in all school districts.

For the utilitarian perspective, it is also quite desirable that further research on the effects and legal status of school and classroom structures and arrangements should be carried out. Arguably, students have the right to be free from the adverse consequences of certain schooling practices. The use of assessment and classification procedures for students based on standard intelligence tests, and the implementation of certain within-school practices such as ability grouping, special education placement, and the exclusion of 'ineducable' children certainly ought not to be taken for granted.[114] The question has to be asked: Do these practices affect the emotional and psychological well-being of students? If they do, implications for school practices are clear.

Concern for welfare rights of students should also spur a more serious look into the accountability of teachers and administrators. If we are bound by the obligation to develop rational individuals capable of contributing to the human good, adequate provisions and effective educative processes should be provided for. Moreover, if medical doctors and lawyers can be subjected to legal action for malpractice, there is no reason in principle why similar action may not be taken in teaching.[115] Allegedly, the identification of competencies in teaching has proved intractable. Nevertheless, there is reason to believe that this is more a sorry reflection of the failures of the teaching profession and of teacher education rather than of the intractable nature of teaching itself. It is time, we should think, that our strong aspirations for professional status should be matched by committed, widespread efforts to establish professional competencies.[116]

(ii) Option rights for students? From the utilitarian perspective, court intervention must remain suspect in relation to the claimed option or freedom rights of students. Thus, although student and child advocacy in the United States and in Canada seeks to expand their freedom rights in the civil and political spheres particularly the utilitarian viewpoint calls for caution. Realistically

utilitarianism insists that no legitimate advantage or moral merit is advanced by dishing out to the young the unqualified exercise of political and civil rights which requires a suitable degree of rationality. As Mill put it decades ago, "Liberty, as a principle, has no application to any state of things anterior to the time mankind have become capable of being improved by free and equal discussion."[117] Mill's point is surely that a person whose rational capacities have not been developed and who therefore cannot take into account relevant considerations for their choices and actions are likely to compromise welfare or happiness opportunities for themselves and for others. Taking into account the fluidity of the age which we may designate as that of rationality, the point that Mill makes is, in principle, quite unexceptionable. Indeed, the utilitarian denial of certain option rights to young people and its espousal of paternalism as legitimate modes of dealing with them present an arguable case. Such a case rests on the view that ultimately human beings aspire for human good, and that for its achievement, men's decisions and actions should issue from the dictates of rationality.

If our analysis is correct, then there is no real justification for following the American model as exemplified by the Tinker decision. What we could wish, in

fact, is that such a model be modified.

The least we would want of the U.S. Supreme Court is to qualify its blanket statement that children are fully constitutional persons. Of course, this statement is welcome with reference to student welfare rights: it surely strengthens advocacy of such rights and sensitizes social and educational institutions enough to spur them to positive action. But if our analysis is not mistaken, it remains necessary for the Court to place certain strictures on students' legal personality in relation to option or freedom rights. After all, it would have been difficult for the Court to decide in favor of Tinker had the litigation included as petitioners the younger Tinkers: one aged 8, and another 11, both of whom also wore the forbidden armbands. As Burt remarked, it would have seemed "incongruous to unfurl the First Amendment for the right of eight-year-olds to protest their government's war policy."[118] Thus the utilitarian view insists that the common law requirement of rationality for the full and unimpeded exercise of political and civil rights be maintained. Freedom of speech or of the press, for example, may not be granted to the young in the same way that it is given to adults.

However, denial of full entitlement to free speech and to other fundamental rights requires a re-thinking about age as an indicator of rational competencies and as

a basis for classification. What age serves as the suitable demarcation line between the ability and the lack of ability to participate rationally and thus fully in the system of political and civil rights in society? It is at this point that the thrust of the utilitarian position may appear vulnerable. It may be said that in any democratic system, deprivation of any fundamental liberty requires nothing less than demonstrable incapacity to make acceptable use of one's liberties. Such requirement could be thought to preclude the deprivation of children's or students' freedoms, since this requirement entails a demonstration that each child is rationally incapacitated- a demonstration that cannot be easily done, except with the very young. Nevertheless, perhaps we need not be hampered unnecessarily by the requirement of "demonstrable incapacity." In any society, or at least the ones we are familiar with in the Western world, the use of rules of thumb or age-based demarcation lines is an accepted one. In the American case, for example, a constitutional scholar has observed as follows:

> In no area of constitutional controversy has our legal system wholly repudiated rules of thumb. Even in the exercise of those most central freedoms of expression and association, we have assumed that persons are properly regulated by rules that might well prove imperfect from the perspectives of the individual case.... So long as the 'fit' between an appropriate purpose and the circumscribing of a right is sufficiently close in light of the values affected, there is

> no basis in the general run of cases for demanding anything more.[119]

Rules of thumb on the age demarcation line may be permissible.

A utilitarian, however, would want to grant full option rights when their rational exercise is already indicated. He would therefore not pre-judge the case by setting down the age demarcation line without intensive and extensive study. Nonetheless, it is not inappropriate to quote from someone who has looked closely into the matter. Musgrove, in his Youth and the Social Order, has this to say:

> There is a general need for lowering the age of admission into English social and cultural institutions, for taking in 16-year-olds and according them the rights, and imposing the responsibilities, which apply to their seniors. Political and legal maturity should be recognized at 17....[120]

Considering the similarities between the English and the Canadian societies, Musgrove's proposal may serve us well, too.

The use of our suggested age demarcation line will imply that most students at the high school level will have no legal political or civil liberties to exercise. But there need be no fear here that students will become adults who are incompetent to participate in the workings of society and the body politic. For if we are really concerned with their preparation for citizenship and for a full, responsible social membership, educational

processes will have to be so structured as to provide for the relevant experiences. The school's concern for the development of rationality, particularly in the sphere of political and civil life, should obligate educators to grant students what Strike calls "developmental liberties". Though similar in content to political and civil liberties, they are goods rather than legal rights. They will aim at cultivating individuals who are autonomous and rational in the relevant spheres of life, and will be tailored to suit the maturity levels of students as determined by educators.[121] In this way, students are treated as apprentice libertarians who are "attempting to internalize the standards and practices of a certain political form of life."[122]

The view proposed here thus requires enlightened vision on the part of educators. It resists court imposition of standards appropriate to adults. But what of educators' abuse? Nevertheless, the solution could lie on the exercise of what Manley-Casimir calls discretionary justice. It is quite relevant to quote extensively from him as follows:

> The model of discretionary justice accommodates the exercise of discretion by administrators in terms of the substantive and procedural fairness evidenced in administrative decisions, particularly as they affect individual parties.
>
> Applied to issues of school governance, this model (discretionary justice) directs attention to the

> exercise of discretion by school administrators at all levels of the educational enterprise in terms of the fairness of the decision-making process and of the outcome of the decision.[123]

Provided that this model is adopted in schools, the absence of court intervention should prove to be non-threatening towards the fair treatment of students.

Liberal democracy, whether Millian or Rawlsian in inspiration, would allow everyone to shape not only the image but also the course of his own life. But if the pursuit of one's own is not to be a blind, harmful intrusion against the good life that everybody else is capable of in a civilized democracy, the demand of rationality should not be taken lightly. This should mean that the priority of the development of rationality over the exercise of freedom at least at the secondary level and below can be sustained. Unless, of course, we choose to insist that the children in these institutions are already full-fledged participants in the body politic. If we so choose, there is no point in pretending that we educators are preparing children for adult rights and responsibilities in political and social life. For teaching is rendered superfluous by students' knowledgeability about what they are taught. To use a fitting analogy, there is no point in teaching one how to drive if he already possesses an official and valid driving license. Unless, of course, the license has been issued

erroneously to him who does not know how to drive. In that case, revocation of the license is the right course of action. And then, teaching would make sense.

It should prove to be a great error if any declaration of the constitutional or legal personhood of students were so construed as to grant political and civil rights to all students indiscriminately, irrespective or their age, or more appropriately, their rationality. At the same time, discriminating against students with regard to their enjoyment of welfare rights should prove equally offensive to our moral sensitivities.

**Sections V and VI of this study incorporate some materials drawn from the author's article entitled "Freedom and Rights in Schools: Towards Just Entitlement for the Young" submitted to Educational Theory for publication.

FOOTNOTES:

1. See, in particular, Archibald Cox's The Warren Court (Cambridge, Mass.: Harvard Univ. Press, 1967).
2. Kent v. United States, 383 U.S. 451 (1966).
3. In the Matter of Gault, 387 U.S. 1 (1967).
4. Goss v. Lopez, 419 U.S. 565 (1975).
5. Wood v. Strickland, 420 U.S. 308 (1975).
6. Tinker v. Des Moines Independent Community School District, 393 US. 503 (1969), at 511.
7. Ibid.
8. Ibid., at 507.
9. Mike Perry, "The Legal Status of the Teacher in Newfoundland- The Legal Responsibilities of Teachers for Classroom Supervision," Newfoundland Teacher Association Bulletin 19 (1975): 6.
10. Cropp v. Potash School Unit No. 25 (1977), 6 W.W.R. 267.
11. Bourgeault v. Board of Education, St. Paul's Roman Catholic School District #20 (1977), 82 D.L.R.(3d) 701.
12. Robison v. Board of Trustees of Calgary School District No. 19 and Franklin (1977), 5 A.R. 430.
13. Wilkes v. Municipal School Board of the County of Halifax and Eastern Shore District High School Board of Trustees (1978), 26 N.S.R.(2d) 628.
14. R. v. Imbeault (1977), 17 N.B.R.(2d) 234.
15. MacDonald v. Municipal School Board of the County of Halifax (1979), 30 N.S.R.(2d) 443.
16. Peter Bargen, The Legal Status of the Canadian Public School Pupil (Toronto: Macmillan Company of Canada, 1961).
17. "An Act Respecting the Operation of Schools and Colleges in the Province, 1969," Legislation Passed 1968 and 1969 relating to the Reorganization of Education, Province of Newfoundland and Labrador (St. John's: E. Ralph Davis, no date), pp. 13, 16.
18. "An Act Further to Amend the Schools Act, 1974," The Statutes of Newfoundland, 1974. (St. John's: E. Ralph Davis, 1974), pp. 82-83.
19. Frank Vallee and Donald Whyte, "Canadian Society: Trends and Perspectives," in Canadian Society, ed. Bernard

Blishen, et. al. (Toronto: Macmillan of Canada, 1971), p. 559.

20. Ibid.

21. S.M. Lipset, "Revolution and Counterrevolution: The United States and Canada," in The Canadian Political Process: A Reader, ed. Orest M. Kruhlak, et. al. (Toronto: Holt, Rinehart and Winston of Canada, 1970), pp. 13-38.

22. Thus, the famous words of Oliver Wendell Holmes: "The prophecies of what the court will do in fact, and nothing more pretentious, are what I mean by the law." The Path of Law, in Readings in Jurisprudence and Legal Philosophy, ed. Morris Cohen and Felix Cohen (Boston: Little, Brown and Co., 1951), p. 417.

23. Paul Weiss, Our Public Life, Carbondale, Ill.: Southern Illinois Univ. Press, 1959), p. 52.

24. Ibid.

25. As Weiss notes, some judges in the United States were "inclined to overstress 'states' rights' and to condone or tolerate the practice of segregation in areas where this has been the prevailing mode. Others try to back up the intentions of the legislature or past judicial decrees. They are inclined to overstress 'The Law'...." Ibid., pp. 166-167. Similarly, the Canadian Supreme Court seems not ready to depart from the common law conservatism. No wonder criticism is made of its diffidence in putting more teeth to the Canadian Bill of Rights, and thus of its lack of moral leadership in pursuing the moral principles underlying the Bill.

26. "Victory for Quotas," Newsweek, July 9, 1979, pp. 77-78.

27. John Coons, "Recent Trends in Science Fiction: Serrano among the People of Number," 6 Journal of Law and Education (1977): 24.

28. Ibid., 26. A good piece of study in the area of education that studied suggested alternatives for coping with student demands and perceptions is William Alexander and Joseph Farrell's A Study of Student Participation in Decision-Making in Ontario Schools (Toronto: Dept. of Educational Planning, OISE, 1973).

29. Hon. William Doyle, "Can Social Science Data Be Used in Judicial Decision Making?" 6 Journal of Law and Education (1977): 13.

30. Ibid., 15. Consider another statement: "Although... there remains a temptation to see Brown and the school cases which follow as being based on social science

data, it is clear that it and its progeny are founded on much more fundamental precepts- organic, moral, positive law and reason." Ibid., 17.

31. For a wider discussion of the interaction of social sciences and values in social policy decisions, see Martin Rein, Social Science and Public Policy (New York: Penguin Books, 1976).

32. San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973) is a celebrated case in which the Supreme Court denied that the right to educational opportunity is covered by the equal right protection clause of the Fourteenth Amendment of the U.S. Constitution.

33. Coons, "Recent Trends...." at 17.

34. Tinker v. Des Moines, at 511.

35. Ibid., at 506.

36. Epperson v. Arkansas (1968), in striking down a statute making it unlawful to teach the theory of evolution, decided that the First Amendment does not tolerate laws that cast a pall of orthodoxy over the classroom. Primarily, however, the case was decided not on free speech grounds but on the basis that the statute violated the First Amendment prohibition of laws respecting an establishment of religion or prohibiting the free exercise thereof. Meyer v. Nebraska (1923) pertained to academic freedom of teachers, holding that no statute may interfere with the calling of modern language teachers, holding that no statute may interfere with the calling of modern language teachers, with the opportunity of pupils to acquire language, and with the power of parents to control the education of their children. West Virginia Board of Education v. Barnette (1943) held that action compelling flag salute and pledge of allegiance transcends constitutional limitations and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to reserve from all official control. Finally, Burnside v. Byars (1966), the case closest to Tinker in character, was decided by an appeal court only three years before, and hardly serves as a binding precedent for the Supreme Court.

37. Hon. Lois Forer, "Rights of Children: The Legal Vacuum," in The Rights of Children, ed. Albert Wilkerson (Philadelphia: Temple Univ. Press, 1973), p. 24.

38. In "Hard Cases," 88 Harvard Law Review 1057 (1975), Ronald Dworkin insists that judges are never free to weigh conflicting social policies and to decide on thei

own. They are required, rather, to discover legal principles which must be applied in like cases consistently. But see "Note," 74 Michigan Law Review 1167 (1976), disputing Dworkin's view.

39. A good coverage of the issues involved is found in David Forte (ed.), The Supreme Court in American Politics (Lexington, Mass.: D.C. Heath, 1972.

40. Alexander Bickel, The Supreme Court and the Idea of Progress (New York: Harper Torchbooks, 1970).

41. Archibald Cox, The Warren Court (Cambridge, Mass.: Harvard Univ. Press, 1967.

42. Alexander Bickel, "Is the Warren Court Too Political?" in The Supreme Court in American Politics, p. 54.

43. The relevant cases are Goss v. Lopez and Wood v. Strickland (footnotes 4 and 5).

44. For a good treatment of the status of the young, in general, see Frank Musgrove, Youth and the Social Order (Bloomington, Ind.: Indiana Univ. Press, 1964). For the Canadian situation, see Task Force on the Child as a Citizen, Admittance Restricted: The Child as a Citizen in Canada (Ottawa: Canadian Council on Childrer and Youth, 1978).

45. Tinker v. Des Moines, at 515.

46. John Stuart Mill, Essential Works of John Stuart Mill, ed. Max Lerner, On Liberty (New York: Bantam Books, 1965), p. 263.

47. V. Lorne Stewart, "Culpability and Children," (Toronto: Unpublished manuscript, 1968), quoting the Canadian Juvenile Delinquents Act, pp. 3-4.

48. John Holt, Escape from Childhood (New York: Ballantine Books, 1974).

49. Richard Farson, Birthrights (New York: Penguin Books, 1974).

50. Holt, Escape...., p. 1.

51. The Most Reverend George Andrew Beck, "Aims of Education: Neo-Thomism," in T.H.B. Hollins, Aims in Education: The Philosophic Approach (Manchester: Manchester Univ. Press, 1964), p. 116.

52. Immanuel Kant, The Fundamental Principles of the Metaphysics of Morals, translated by H.J. Paton as The Moral Law (London: Hutchinson's Univ. Library, 1948).

53. See, for example, Stephen Darwall, "Two Kinds of Respect," Ethics 88 (1977): 36-49; Carl Cranor, "Toward a Theory of Respect for Persons," American Philosophical Quarterly 12 (1975): 309-319; and R.S. Downie and Elizabeth Telfer, Respect For Persons (London: George Allen and Unwin, 1970).

54. Holt's Escape from Childhood is a futile attempt at this.

55. Lawrence Kohlberg, "The Child as a Philosopher," 7 (1968), pp. 25-30; L. Kohlberg and E. Turiel, "Moral Development and Moral Education," in Psychology and the Educational Process, ed. G. Lesser (Chicago: Scott, Foresman and Co., 1971).

56. Arlene Skolnick, "The Limits of Childhood: Conceptions of Child Development and Social Context," 39 Law and Contemporary Problems 38 (1975): at 76.

57. Both Holt and Farson are guilty of this mistake.

58. This, presumably, is the rationale behind child advocacy by adult groups, and for their formulation of children's needs and rights. Thus, see Gisela Konopka, "The Needs, Rights and Responsibilities of Youth," Child Welfare LV (1976): 180-181; Henry Foster and Doris Freed, "A Bill of Rights for Children," 6 Family Law Quarterly 344 (1972); Mary Kohler, "The Rights of Children: An Unexplored Constituency," Social Policy I (1971): 36-43; and numerous articles in Albert Wilkerson, The Rights of Children (footnote 37).

59. Task Force, Admittance Restricted...., p. 2.

60. Ibid., pp. 21-121.

61. The concepts of wants, desires, and needs are often used interchangeably, although they are, strictly speaking, distinguishable. Of the three, need, I believe, has the greatest value claim. For an analysis of need, see Robert Dearden, "'Needs' in Education," British Journal of Educational Studies XIV (1966): 5-17; Also, R. Dearden, The Philosophy of Primary Education (London: Routledge & Kegan Paul, 1968), pp. 13-24.

62. See, for example, Frederick McDonald, Educational Psychology (Belmont, Calif.: Wadsworth Publishing, 1965). In general, see Milton Rokeach, The Nature of Human Values (New York: Free Press, 1973).

63. H.J. McCloskey, "Human Needs, Rights and Political Values," American Philosophical Quarterly 13 (1976): 1.

64. Ibid., 7.

65. The view of unchanging human nature that gradually unfolds much as an acorn does into an oak traces back to Aristotle. No doubt, although Aristotle believed that an examination of human nature will reveal a justification for such a practice as slavery, he has a more exalted view of human nature than that held by many who followed his belief in its unchanging nature, whatever it is.

66. B.F. Skinner, About Behaviorism (New York: Vintage Books, 1974), p. 264.

67. See, for example, Floyd Matson, The Idea of Man (New York: Delacorte Press, 1976), particularly chapter 10; and Floyd Matson (ed.), Without/Within: Behaviorism and Humanism (Monterey, Calif.: Brooks/Cole, 1973). Also Tibor Machan, The Peudo-Science of B.F. Skinner (New Rochelle, N.Y.: Arlington House Publishers, 1974).

68. McCloskey, ibid., 10.

69. Abraham Maslow, Toward a Psychology of Being (Boston: Van Nostrand Reinhold, 1968).

70. Carl Rogers, Client-Centered Therapy (Boston: Houghton Mifflin, 1951); On Becoming a Person (Boston: Houghton Mifflin, 1961).

71. Abrahan Maslow, "Deficiency Motivation and Growth Motivation," in Selected Educational Heresies, ed. William O'Neill (Chicago: Scott, Foresman & Co., 1969), p. 223.

72. Carl Rogers, Freedom to Learn (Columbus, Ohio: Charles Merrill, 1969), p. 105.

73. For a clear discussion of the humanistic orientation and its implications for education, see the articles in David Nyberg (ed), The Philosophy of Open Education (London: Routledge and Kegan Paul, 1975). Also, Michael Littleford, "Some Philosophical Assumptions of Humanistic Psychology," Educational Theory 20 (Summer 1970): 229-244.

74. R.S. Peters, Authority, Responsibility and Education (London: George Allen & Unwin, 1973), and "Freedom and the Development of the Free Man," in Educational Judgements, ed. James Doyle (London: Routledge and Kegan Paul, 1973), pp. 119-142. Also, Jonathan Kozol, "Free Schools: A Time for Candor," in Radical School Reform, ed. Cornelius Troost (Boston: Little, Brown and Co., 1973), pp. 80-88.

75. This point is drawn out clearly in the educational context by David Nyberg, "Ambiguity and Constraint in

the 'Freedom' of Free Schools," in Ethics and Educational Policy, ed. Kenneth Strike and Kieran Egan (London: Routledge and Kegan Paul, 1978), pp. 127-144.

76. Victor Worsfold, "A Philosophical Justification for Children's Rights," Harvard Educational Review 44 (1974): 151.

77. John Rawls, A Theory of Justice (Cambridge, Mass.: The Belknap Press, 1971), pp. 136-137.

78. Ibid., p. 302.

79. Ibid., p. 542.

80. See, for example, H.J. McCloskey, "A Critique of the Ideals of Liberty," Mind 74 (1965), particularly pp. 486-489; in relation to Rawls's views, see H.L.A. Hart, "Rawls on Liberty and its Priority," in Reading Rawls. Critical Studies on Rawls' "A Thory of Justice" (Oxford: Basil Blackwell, 1975), particularly pp. 233-237.

81. Rawls, A Theory of Justice, p. 61.

82. Ibid., pp. 542-543.

83. Brian Barry, The Liberal Theory of Justice (Oxford: Clarendon Press, 1973), pp. 59-82.

84. Ibid., p. 118

85. David Schaefer, "A Critique of Rawls' Contract Doctrine," Review of Metaphysics 28 (1974): 91. Similar view is raised by Milton Fisk, "History and Reason in Rawls' Moral Theory," pp. 53-80; and by Thomas Nagel, "Rawls on Justice," pp. 1-16, in Reading Rawls.

86. Schaefer, ibid. The emphasis on the need to consider human nature more realistically is found in Morton Kaplan, Justice, Human Nature and Political Obligation (New York: Free Press, 1976).

87. Worsfold, "A Philosophical Justification...," 153.

88. Rawls, A Theory of Justice, p. 138.

89. For this, see the graphic account of the unfortunate plight of a substantial number of Canadian children in Admittance Restricted, chapter 4.

90. For an explication of paternalism and of the possibility of its justification, see among others, Gerald Dworkin, "Paternalism," in Philosophy of Law, ed. Joel Feinberg (Encino, Calif.: Dickenson Publishing, 1975), pp. 174-184; and John Hodson, "The Principles of Paternalism," American Philosophical Quarterly 14 (1977): 61-69.

91. Rawls, A Theory of Justice, pp. 248-250.

92. Ibid., pp. 509-510.

93. Ibid., p. 505.

94. This verdict was made by Stuart Hampshire, Morality and Pessimism (Cambridge, Mass.: Cambridge Univ. Press). He writes as follows: "The utilitarian philosophy, before the First World War and for many years after it... was a bold, innovative, even a subversive doctrine, with a record of successful social criticism behind it. I believe that it is losing this role, and that it is now an obstruction." On p. 2.

95. See articles noted on footnote 58.

96. The picture of utilitarianism that will emerge, thus, may not be attributed specifically to any utilitarian. My rendition of the theory, however, will owe much from John Stuart Mill, who set out his doctrine mainly in a thin volume, On Utilitarianism. Essential Works of John Stuart Mill, ed. Max Lerner (New York: Bantam Books, 1961), pp. 183-248.

97. Provided McCloskey's conception of human nature is expanded to include possession of higher needs, his position may well serve as supportive of this second assumption. See footnote 63. In any case, see Henry Veatch, "The Rational Justification of Moral Principles: Can There Be Such a Thing?" Review of Metaphysics 29 (1975): 217-238; and Anthony Quinton, The Nature of Things (London: Routledge and Kegan Paul, 1973), chapter 12.

98. See Maslow, footnote 69.

99. Rationality is discussed in the various articles included in the second volume of R. F. Dearden, et, al., Education and the Development of Reason (London: Routledge and Kegan Paul, 1972).

100. The literature on the separation of values from facts and on the implications of what is called the "naturalistic fallacy" is quite extensive. The need for discarding the separation, and for founding moral values on human nature, is strongly argued in Henry Veatch, For an Ontology of Morals (Evanston, Ill.: Northwestern Univ. Press, 1971).

101. The issues which the controversy between act and rule utilitarians centre on are found in Michael Bayles (ed.), Contemporary Utilitarianism (Garden City, N.Y.: Anchor Books, 1968).

102. Thus, see such recent works as David Lyon's "Human Rights and the General Welfare," in Rights, ed. David

Lyons (Belmont, Calif.: Wadsworth Publishing, 1979), pp. 174-186, and his "Mill's Theory of Morality," Nous 10 (1976): 101-120. Also, see D.G. Brown's "What is Mill's Principle of Utility?" Canadian Journal of Philosophy 111 (1973): 1-12, and "Mill on Liberty and Morality," Philosophical Review LXXXI (1972): 133-158.

103. Stuart Hampshire, Morality and Pessimism, footnote 94.

104. The problems are raised in a valuable survey by Dan Brock, "Recent Work in Utilitarianism," American Philosophical Quarterly 10 (1973), particularly 245-253.

105. That Rawls presupposes a vision of the good life and the good society is shown by his definition of happiness: "A person is happy when he is in the way of a successfull execution (more or less) of a rational plan of life drawn up under (more or less) favorable conditions, and he is reasonably confident that his intention can be carried through." Rawls, pp. 93, 548). Are we to believe, then, that people in primitive, authoritarian or patriarchal societies never are, or were, happy? What of people (perhaps as exemplified by the innocent South Sea Islanders) who presumably do not have life plans? And what of some monks in monasteries whose vocations were imposed on them by their parents in the first place?

106. Thomas Green, The Activities of Teaching (New York: McGraw-Hill, 1971), p. 223.

107. See such books as: Richard Flathman, The Practice of Rights (Cambridge: Cambridge Univ. Press, 1976); A.J.M. Milne, Freedom and Rights (London: George Allen and Unwin, 1968); Ervin Pollack (ed.), Human Rights (Buffalo, N.Y.: Jay Stewart Publications, 1971); D.D. Raphael (ed,), Political Theory and the Rights of Man (Bloomington, Ind.: Indiana Univ. Press, 1967).

108. This classification, and much of its characterization, is borrowed from Martin P. Golding, "Towards a Theory of Human Rights," Monist 52 (1968): 521-549. The classification, though employing different terms, has long been recognized in philosophical literature. As early as 1796, in his Enquiry concerning Political Justice (ed. K. Codell Carter, Oxford University Press, 1971), William Godwin made a distinction between active and passive rights. More recently, D.D. Raphael used the labels "rights of action" and "rights of recipience" in his book Moral Judgement. See D.D. Rapahel, in Political Theory..., pp. 102-103. Golding's terminology is preferred here because it highlights the use of "welfare rights" in both legal and philosophical

literature. Obviously the characterizations given these rights by their authors do not always coincide. My own description in this article might also involve some reading into Golding, and I hold myself responsible for it.

109. Golding, "Towards a Theory...": 541-542.

110. Mill's On Liberty is one of the strongest expressions of this viewpoint. See footnote 46.

111. Golding, 542-543.

112. Holt claims the thesis that what children need we all need. As he puts it, "A child, we are often told, needs to feel that he is a human being in his own right. Yes, but which of us, of whatever age, does not need to feel this?" Escape from Childhood, p. 108. Holt is right if all he is saying is that we have common human needs giving rise to the same general rights. But clearly he is wrong insofar as real psychological, emotional and physical differences between the young and the mature require different treatment or provisions which serve as the content of specific rights. Surely, adults would not expect the same sort of reasonable care and protection accorded to seven-year-old children in school!

113. See Appendix D.

114. This issue is admirably discussed by David Kirp, "Student Classification, Public Policy, and the Courts," pp. 7-52; and by Jane Mercer, "A policy Statement on Assessment Procedures and Rights of Children," pp. 125-141, Harvard Educational Review 44 (1974).

115. This point is argued in Romulo Magsino, "Holding Teachers Accountable: For What?" in The Modes of Teaching, ed. Romulo Magsino and James Covert (Washington, D.C.: University Press of America, 1977), pp. 14-33.

116. In Doe v. San Francisco Unified School District, 131 Cal. Rptr. 854 (Dist. Ct. App. 1976), the court dismissed a high school graduate's suit to recover for alleged negligence of the school board and its agents (teachers and administrators) on the ground that the science of pedagogy is fraught with different and conflicting theories of how and what a child should be taught, and that its methodology affords no readily acceptable standards of care or injury.

117. J. S. Mill, in Essential Works... p. 263.

118. Robert Burt, "Developing Constitutional Rights of, in, and for Children," 39 Law and Contemporary Problems 118 (1975): 122. Or, take the case of New Jersey's

newly-approved criminal code which lowers the age of voluntary consent for sexual intercourse from sixteen to thirteen and makes sex between even younger children legal if there is less than four years' difference in their ages. A teacher who discussed that provision in class reported: "The kids said they weren't ready for that kind of responsibility.... And they were surprised there were adults who thought they were." Needless to say, parents are up in arms against such a mindless provision- and rightly so! Newsweek, May 7, 1979, p.36.

119. Laurence Tribe, "Childhood, Suspect Classification, and Conclusive Presumptions: Three Linked Riddles," 39 Law and Contemporary Problems 8 (1975): 13-14.

120. Frank Musgrove, Youth and the Social Order (Bloomington, Ind.: Indiana University Press, 1967), p. 157.

121. Kenneth A. Strike, "Philosophical Reflections on Tinker v. Des Moines," Proceedings of the 30th Philosophy of Education Society (U.S.) Meeting, ed. Michael Parsons (Edwardsville, Ill.: Studies in Philosophy and Education, 1974), pp. 403-406.

122. Ibid., p. 405.

123. Michael Manley-Casimir, "School Governance as Discretionary Justice," School Review 82 (1974): 349. For an extensive treatment of the notion of discretionary justice, see Kenneth Davis, Discretionary Justice (Baton Rouge, La.: Louisiana State University Press, 1969).

Appendix A

Research Proposal*

I. Title of Proposed Study

A COMPARATIVE STUDY OF STUDENT RIGHTS IN NEWFOUNDLAND AND THE UNITED STATES

II. Scope and Objectives of the Study

This study will attempt to identify the status and the justification of certain alleged student rights in Newfoundland high schools in comparison with the status and the justification of the rights of high school students in the United States.

The alleged rights to be investigated are as follows:

1. The right to free speech; 2. the right to free press; 3. the right to form or join associations or assemblies; 4. the right to determine personal appearance and behavior; 5. the right to privacy; 6. the right to due process; 7. the right to choose one's curricular studies; and 8. the right to reasonable punishment.

While the intent of the study is to compare the rights of Newfoundland high school students with those of American students in general, the former will be compared with the rights of high school students within the Wisconsin state school system as an illustrative case.**

The need to study how Newfoundland students stand with reference to at least a limited number of rights is made imperative by recent developments in the area of student rights in the United States. In such cases as Tinker v. Des Moines Independent Community School District (Berkman, 1970), Goss v. Lopez (Ransom, 1976), and Wood v. Strickland (Leach, 1976-77), the U.S. Supreme Court has established the constitutional basis of certain student rights. Moreover, the Court has shown willingness and ability to protect constitution-

ally -recognized student rights.

Impelled by a sense of universalism and a desire to enjoy parity with students elsewhere, Newfoundland students and their sympathizers are bound to raise these crucial questions:

1. Do Newfoundland students possess legal entitlements to the rights mentioned above?
2. By virtue of what authority do they possess, or lack, entitlement to these rights?
3. Are there sufficient and reasonable justifications for their entitlement or non-entitlement to these rights?
4. What strategies may be suggested to secure and maintain deserved student rights in Newfoundland secondary schools?

These questions serve as the problematic issues concerning which this study is meant to provide answers or solutions. At the same time, these questions indicate the character of this study as a multi-disciplinary enterprise. Questions 1, 2 and 4 require an empirical and analytic investigation of educational and legal matters, while question 3 involves a sustained incursion into philosophical, particularly ethical, considerations.

III. Theoretical Significance and Practical Importance of the Study

As Bargen (1961:10) notes, provincial supremacy over education brings with it the power to delegate authority to educational bodies. Such bodies, in turn, exercise the power of decision-making over a wide range of matters, including the governance of student conduct in schools. Yet Kerr (1972:347-52) has castigated a provincial minister of education for issuing a memorandum that reiterated school boards' power to ban political student clubs in secondary schools. For Kerr, this memorandum ignored an alleged principle (student right to association) recognized under the Canadian Constitution.

A controversy like this, which illustrates a clash between two views about student entitlement to certain alleged rights, will not be an isolated one in the years to come. If the turbulence and the volume

of litigation associated with the crusade for student rights in the United States are relevant considerations, the practical importance of the study is obvious. If harmony in the educational process is desired, both Newfoundland educators and students, as well as the public, must be able to ascertain the extent, the limit, and the basis of the exercise of alleged student rights. But moreover, an understanding of the status and justification of student rights might serve to suggest needed reform in the area of student-educator relationships.

Theoretically, the study will attempt a modest application of an ethical theory called utilitarianism to the question of student rights. As such an attempt, the study will seek to develop a perspective for viewing numerous claims currently being made related to the granting or withdrawal of student rights. If the perspective is shown to be adequate and reasonable, it will serve as an evaluative framework by which claimed student rights may be accepted or rejected, and by which student rights being denied under the present set-up may be insisted upon or given up altogether.

While presently under siege (Dworkin, 1977; Nozick, 1974; Rawls, 1971) as a theory in law and morals, utilitarianism still remains a predominant and viable foundation of legal and moral principles (Barrow, 1975; Sartorius, 1975; Hodgson, 1967). This study will not argue, and is not meant to argue, the utilitarian case. Rather, it will simply try to show that some rights under investigation may be justified from the utilitarian perspective and that some may not. However, by way of suggesting that the utilitarian view can be used to resolve issues within a certain area of concern, the study will be indirectly supportive of the utilitarian theory. For if the respectability of this theory can be shown and maintained within the area of student rights, then there may be no reason, in principle, to deny *a priori* its respectability in other areas.

IV. Review of Related Research and Literature

In Canada, the paucity of research and literature related to the central concerns of this study is marked. The standard book on student rights, Bargen's *The Legal Status of the Canadian Public School Pupil*, is sixteen years old, and even this book deals with the rights under consideration only tangentially. Other Canadian materials available centre on university rather than

high school students (Janisch, 1975). Lately, Interchange devoted two numbers (volume 8) to the question of children's rights. Again, the issues raised in that publication barely touch, if at all, the concerns of this study.

Research on student rights in Newfoundland is virtually non-existent. The closest to what may be regarded as a study of student rights in this Province resulted in the NTA's policy statement on students' rights and responsibilities (NTA, 1975), a slender and an unargued document. A modest attempt by a small group of students at Memorial University to compare high school and education students' views on their rights and on other matters is too imprecise and too subjective to give us any helpful conclusions. Altogether then, there is really no Newfoundland literature on the subject of this study. (For a note on Memorial students' attempt, see reference.)

Nevertheless, there is much literature already available on the rights of American students. Further, much has been written concerned with arguing and justifying the rights of children as students. The bibliography included in this proposal is but a small sampling of what is available along these lines. Hopefully, this study will utilize relevant, available materials in viewing the subject of student rights in Newfoundland.

V. Research Plan, Sources of Materials and Methods of Research

Research Plan and Sources of Materials. This study will be undertaken in four stages.

1. Legal research and analysis. This stage involves the collection and analysis of legal materials that bear on student rights under consideration. For the Newfoundland situation, the following will be analyzed: The British North America Act of 1867, The 1948 Terms of Union between Newfoundland and Canada, various legislative acts and court rulings in Newfoundland affecting student rights, and statements of school boards and other educational bodies or groups related to student rights. For the American situation, the following will be studied: The United States Constitution, particularly the Bill of Rights and commentaries on them; the decisions of the United States Supreme Court and other courts relevant to student rights; legal comments on

such decisions; and statements of school boards and other educational bodies.

2. Survey of school board policies. The second stage will determine the present status of specific student rights from the perspective of school boards in Newfoundland. For the purpose of making a specific comparison, school board policies on student rights will be surveyed in the State of Wisconsin, where this investigator has available contacts. Only a limited number of school boards, preferably the bigger ones, will be covered in the study. About one-hundred (100) will be included.

3. Comparative study of the rights of Newfoundland and American students. Using the conclusions about the status of student rights for the two groups of students drawn from stages 1 and 2, the third stage will ascertain how students compare in terms of the rights under consideration.

4. Philosophical evaluation of student rights. Employing the utilitarian viewpoint, the last stage will assess whether or not there ought to be a legal recognition of Newfoundland students' entitlement to rights as there is for American students. Suggestions will be attempted for securing legal recognition of deserved rights.

At this stage, the study will make a distinction between what are now known as option rights and welfare rights. On utilitarian grounds, attempt will be made to show whether the specified rights under consideration, which fall under either category, are deserved by students or not, whether in Newfoundland or in the United States.

Materials needed for this stage will be drawn heavily from published books and journals of philosophical, educational, and legal nature.

Research Methods.

1. Descriptive survey. A questionnaire (a copy of which is attached) will be used to survey school board policies on specified student rights. The results will be tabulated and analyzed in order to show notable findings.

2. Analysis. A variety of analytical tools, befit-

ting the nature of this study, will be used for its varied concerns. Legal analysis will be used to determine, from relevant documents, the present status of student rights. Comparative analysis will be employed to throw light on the disparity or similarity between the rights of Newfoundland and American students. Philosophical reasoning, which involves both conceptual analysis and normative evaluation, will be used to assess the justifications of student rights.

VI. Expected Outcomes and Implications

Based on this investigator's previous studies on student rights, particularly the one entitled "Student Rights in Canada: Nonsense upon Stilts?" (Magsino, 1977), we can expect much difference between rights allowed Newfoundland students and those enjoyed by American (e.g., Wisconsin) students. More specifically, American students will be found to possess more option rights than their Newfoundland counterparts. Also, it may be expected that American students have greater entitlements in terms of welfare rights, particularly in relation to due process.

The present study may also be expected to show that some welfare rights not presently enjoyed by Newfoundland students (at least to the degree enjoyed by American students) are amply deserved. Further, the study will show good cause against the wholesale granting of certain option rights to students, whether in the United States or in Newfoundland.

The study will have numerous implications for Newfoundland education. If the study is successful in presenting its findings and viewpoints, it will indicate the need for undertaking steps to make sure that deserved student rights are provided for. The study will also reveal the need for educators to formulate a modified version of option rights that would be suitable for high school students.

VII. Investigator's Completed Work Related to Student Rights

While this study is still in its proposal stage, this investigator has completed studies which closely relate to the present one.

In "Student Rights in Canada: Nonsense upon Stilts?" (Interchange, 8, 1-2, 1977), the author explores tenta-

tively and broadly the issues and concerns included in this proposed study.

Other completed studies that bear on the issues under present consideration are as follows:

"Student Academic Freedom and the Changing Student-University Relationships." In Ethics and Educational Policy. Edited by Kenneth Strike and Kieran Egan. London: Routledge and Kegan Paul, 1978;

"Illich, Freedom and Schooling." In Schools, Freedom and Authority. Edited by M.J.B. Jackson. St. John's, Nfld.: Memorial University Printing, 1975;

"The Concept of 'Student Academic Freedom' in the University- An Analysis." A paper presented at the Canadian Society for the Study of Education Conference held in Toronto, 1974; and

"The Courts, the University, and the Determination of Student Academic Freedom." Doctoral dissertation at the University of Wisconsin-Madison, 1973.

*The sections on the itemized budget and on the work schedule have not been included in this Appendix.

**The state of Wisconsin in the United States was chosen to represent the American situation at the more specific school board level primarily for practical reasons. As a former student and resident in Madison, Wisconsin, the investigator still retains familiarity with the State educational system and with a number of school and University of Wisconsin-Madison officials who could be expected to provide him with some valuable assistance. Moreover, there are good reasons for believing that Wisconsin is a good representative of the United States as a whole.

REFERENCES

Adams, I., et. al. The Real Poverty Report. Edmonton: M.G. Hurtig, 1971.

American Civil Liberties Union. Academic Freedom in the Secondary Schools. New York: The Union, 1969.

Anson, R.J."The Educator's Response to Goss and Wood." Phi Delta Kappan 57 (September 1975): 16-19.

Bargen, P.F. The Legal Status of the Canadian Public School Pupil. Toronto: Macmillan, 1961.

Barrow, Robin. Moral Philosophy for Education. London: George Allen & Unwin, 1975.

Benn, S.I. and Peters, R.S. The Principles of Political Thought. New York: Free Press, 1965.

Bentham, J. Anarchical Fallacies. In Works of Jeremy Bentham. Executor, John Bowring. New York: Russell & Russell, 1962.

Bickel, A. The Least Dangerous Branch. Indianapolis: Bobbs-Merrill, 1962; The Supreme Court and the Idea of Progress. New York: Harper Torchbooks, 1970.

Blackstone, W.T. "Human Rights, Equality and Education." Educational Theory 19 (Summer 1969): 288-298.

Cary, E. What Every Teacher Should Know about Student Student Rights. Washington, D.C.: National Education Association, 1975.

Cox, A. The Warren Court. Cambridge, Mass.: Harvard University Press, 1967.

Crittenden, B. Education and Social Ideals. Don Mills, Ontario: Longman, 1973.

Dearden, R.F."Autonomy and Education." In Education and the Development of Reason. Ed. Dearden, R.F., et. al. London: Routledge and Kegan Paul, 1972.

Downie, R.S., et. al. Education and Personal Relationships. London: Methuen, 1974.

Dworkin, R. Taking Rights Seriously. Cambridge, Mass.: Harvard University Press, 1977.

Economic Council of Canada. "Trends and Regional Differences in Education." The Best of Times/The Worst of Times. Ed. Stevenson, H.A., et. al. Toronto: Holt, Rinehart & Winston, 1972.

Eisenberg, J. & McQueen, G. Don't Teach That! Don Mill, Ontario: Paperjacks, 1972.

Fleming, W.G. Educational Opportunity: The Pursuit of Equality. Scarborough, Ontario: Prentice-Hall, 1974.

Forte, D. The Supreme Court in American Politics. Lexington, Mass.: D.C. Heath, 1972.

Fox, R. "New Moves in Canada's Search for Juvenile Justice." Criminal Law Review 665-676 (1976).

Gilbert, V.K., et. al. A Hard Act to Follow. Toronto: Guidance Centre, Faculty of Education, Univ. of Toronto, 1973.

Golding, M.P. "Towards a Theory of Human Rights." Monist 52 (October 1968): 521-549.

Green, T. The Activities of Teaching. New York: McGraw-Hill, 1971.

Hare, William. "Calling a Halt." Paper presented at the Canadian Society for the Study of Education Conference, Quebec City, 1976.

Hart, H.L.A. Punishment and Responsibility. Oxford: Clarendon Press, 1968.

Hodgson, D.H. Consequences of Utilitarianism. Oxford: Clarendon Press, 1967.

Holt, J. Escape from Childhood. New York: Ballantine Press, 1974.

Horne, N.D. "The Educational Issue in the 1980's Will Be Student Rights." British Columbia Teachers 51 (February 1972): 186-188.

Humphreys, E.H. "Equality? The Rural-Urban Disparity in Ontario." In The Best of Times/The Worst of Times. Ed. Stevenson, H.A., et. al. Toronto: Holt, Rinehart & Winston, 1972.

Janisch, H.N. The University and the Law. Halifax: Faculty of Law, Dalhousie University, 1975.

Kerr, Robert. "Constitutional Law- Political Rights and High School Clubs." 50 Canadian Bar Review 347-352 (1972).

Kirp, D. "Student Classification, Public Policy, and the Courts." Harvard Educational Review 44 (February 1974): 7-52.

Kohlberg, L."The Child as a Philosopher." Psychology Today 7 (1968): 25-30.

Kohlberg, L. and Turiel, E. "Moral Development and Moral Education." In Psychology and the Educational Process. Ed. Lesser, G. Chicago: Scott Foresman, 1971.

Leach, W. "Wood v. Strickland: Issues and Implications for School Board Participation." 15 Journal of Family Law 235-257 (1976-77).

Levin, M. and Sylvester, C. Rights of Youth. Don Mills, Ontario: Paperjacks, 1972.

Levy, L.W. Judicial Review and the Supreme Court. New York: Harper Torchbooks, 1969.

Lipset, S.M. "Revolution and Counterrevolution: The United States and Canada." In The Canadian Political Process. Ed. Kruhlak, O., et. al. Toronto: Holt, Rinehart & Winston, 1970.

Lyon, J.N. "A Progress Report on the Canadian Bill of Rights." 3 Dalhousie Law Journal 39-69 (1976).

MacFeeley, R.W. "The Nuts and Bolts of Procedural Due Process." Phi Delta Kappan 57 (September 1975): 26.

McGuigan, G. Student Protest. Toronto: Methuen, 1968.

McLeod v. Board of School Trustees of School District No. 20 (Salmon Arm) 1952, 2 D.L.R. 562.

Magsino, R. The Courts, the University and the Determination of Student Academic Freedom. Ph.D. dissertation, The University of Wisconsin-Madison, 1973.

Manley-Casimir, M.E. and Housego, I.E. "Conclusion: Equality of Educational Opportunity as Social Policy," In Education and Social Policy: Local Control of Education. Ed. Bowers, C.A., et. al. New York: Random House, 1970.

Melden, I.A. "Clafson on the Right to Education." In Educational Judgements. Ed. Doyle, J. London: Routledge and Kegan Paul, 1973.

Memorial University Students led by Mr. J. Maher, former student of the researcher in Education 4380 (Philosophy of Education).

Mercer, J. "A Policy Statement on Assessment Procedures and Rights of Children." Harvard Educational Review 44 (February 1974): 125-141.

Mill, J.S. On Liberty. In Essential Works of John Stuart Mill. Ed. Lerner, M. New York: Bantam Books, 1961.

Ministry of the Solicitor-General. Young Persons in Conflict with the Law: A Report of the Solicitor General's

Committee on Proposals for New Legislation to replace the Juvenile Delinquents Act. Ottawa, 1975.

Nemirsky, J. "A Point of Law: A Question of Liability." Alberta School Trustee 42 (March 1972): 17; "Under the Act: Compulsory Attendance of Students." Alberta School Trustee 41 (December 1971): 18.

Newfoundland Teachers Association. "Policy on Student Rights and Responsibilities." NTA Bulletin 19 (November 1975): 1.

Nozick, Robert. Anarchy, State and Utopia. New York: Basic Books, 1974.

Olafson, F.A. "Rights and Duties in Education." In Educational Judgements. Ed. Doyle, J. London: Routledge and Kegan Paul, 1973.

O'Sullivan, R. The Inheritance of the Common Law. London: Stevens & Sons, 1950.

Olthuis, J.A."A Place to Stand: A Case for Public Funds for All Public Schools. In The Best of Times/The Worst of Times. Ed. Stevenson, H.A., et. al. Toronto: Holt, Rinehart & Winston, 1972.

Ontario Committee for Government Aid to Jewish Day Schools. "Brief to Premier John Robarts." In The Best of Times/The Worst of Times. Ed. Stevenson, H.A., et. al. Toronto: Holt, Rinehart, & Winston, 1972.

Ontario Separate School Trustees' Association. "Equal Opportunity for Continuous Education in Separate Schools in Ontario." In The Best of Times/The Worst of Times. Ed. Stevenson, H.A., et. al. Toronto: Holt, Rinehart & Winston, 1972.

Parker, G. "The Century of the Child." 45 Canadian Bar Review 741-763 (1967).

Perelman, Ch. The Idea of Justice and the Problem of Argument. London: Routledge and Kegan Paul, 1963.

Perry, M."The Legal Status of the Teacher in Newfoundland- Supervision on School Premises." NTA Bulletin 19 (December 1975):6; "The Legal Status of the Teacher in Newfoundland- The Legal Responsibilities of Teachers for Classroom Supervision," NTA Bulletin 19 (November 1975): 5.

Ransom, L. "Procedural Due Process in Public Schools: The 'Thicket' of Goss v. Lopez," Wisconsin Law Review 934-974 (1976).

Rawls, J. A Theory of Justice. Cambridge, Mass.: The Belknap Press, 1971.

Reid, T. and Reid, J. Student Power and the Canadian Campus. Toronto: Peter Martin, 1969.

Riding v. Elmhurst School District No. 2. 1927, 3 D.L.R. 173.

Rodham, H. "Children under the Law." Harvard Educational Review 43 (November 1973): 487-514.

Russell, P. "Judicial Power in Canada's Political Structure." In Courts and Trials. Ed. Friedland, M.L. Toronto: University of Toronto Press, 1975, pp. 75-88.

Sartorius, R. Individual Conduct and Social Norms. Encino, California: Dickinson Publishing Company, 1975.

Schmeiser, D.A. "Disadvantages of an Entrenched Canadian Bill of Rights." 33 Saskatchewan Law Review 249-252 (Winter 1968); "The Effective Realization of Civil and Political Rights in Canada." 33 Saskatchewan Law Review 179-194 (Fall 1968); Civil Liberties in Canada. London: Oxford University Press, 1964.

Scott. F.R. "Human Rights in Canada." In Discussions on Human Rights: Provincial Conference on Human Rights. Fredericton, 1968, pp. 76-96.

Seavey, W.A. "Dismissal of Students: Due Process." In Student Rights and Responsibilities. Ed. Blair, J.W. Ohio: S. Rosenthal, 1968.

Smiley, D. "Courts, Legislatures, and the Protection of Human Rights." In Courts and Trials. Ed. Friedland, M.L. Toronto: University of Toronto Press, 1975.

Strike, K.A. "Philosophical Reflections on Tinker v. Des Moines." A Paper presented at the 1974 Philosophy of Education Society (U.S.) Conference held in Boston, Mass. Mimeographed.

Student Bill of Rights Proposed for the Public Secondary Schools in the City of Toronto. An Act Respecting the Rights and Responsibilities of Students. Mimeographed. No publication details.

Tarnopolsky, W.S. "A Constitutionally Entrenched Charter of Human Rights- Why Now?" 33 Saskatchewan Law Review 247-249 (Winter 1968); "The Iron Hand in the Velvet Glove: Administration and Enforcement of Human Rights Legislation in Canada." 46 Canadian Bar Review 565-590 (1968); "The Supreme Court and the Canadian Bill of Rights." 53 Canadian Bar Review 649-674 (1975); The Canadian Bill of Rights. Toronto: McClelland & Stewart, 1975.

Thomas Arthur Hogan v. Her Majesty the Queen. June, 1974. Mimeographed copy.

Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).

Toronto Alternate Press Service. The Student Rights Handbook for Metro Toronto. Toronto: The Press Service, 1972.

Trudeau, P.E. A Canadian Charter of Human Rights. Ottawa: Information Canada, 1968.

Weiler, P. In the Last Resort. Toronto: Carswell/ Methuen, 1974.

Wilkinson v. Thomas. 1928 W.W.R. 700.

Wise, A. Rich Schools, Poor Schools. Chicago: University of Chicago Press, 1972.

Wise, A. and Manley-Casimir, M.E. "Law, Freedom, Equality- and Schooling." In Freedom, Bureaucracy and Schooling. Ed. Haubrich, V.F. Washington, D.C.: Association for Supervision and Curriculum Development, NEA, 1971.

QUESTIONNAIRE Please use 'X' to mark your answer.

I. The right to free speech	Yes	No	Policy is *Official	Policy is Custom/Practice
1. Students are free to criticize, publicly, teachers and school officials and their educational policies. Comments:	—	—	—	—
2. Students are allowed to suggest or to incite others to demonstrate or sit-in. Comments:	—	—	—	—
3. Students are free to express political or ideological views in school during off hours. Comments:	—	—	—	—
4. Students are free to use symbolic materials (armbands, buttons, etc.) in classrooms and on campus to express their socio-political views. Comments:	—	—	—	—
5. Students are free to protest, demonstrate or sit-in on campus grounds. Comments:	—	—	—	—
6. Students are free to invite speakers of their choice for student affairs or convocations without consulting school authorities. Comments:	—	—	—	—
7. Students may invite speakers who advocate violent overthrow of government. Comments:	—	—	—	—

*Official- Policy is specifically provided for in official documents.

Appendix B

	Yes	No	Policy is Off.	Policy is Cus/Prac.
8. Students are free to invite speakers whose views on sensitive, controversial matters are unpopular or rejected in the community served by the schools.				
Comments:	—	—	—	—
II. The right to free press				
1. Students are free to distribute on campus, during off hours, non-school materials such as anti-establishment and political manifestoes.				
Comments:	—	—	—	—
2. Students are free to write articles and editorials critical of schoolteachers and of school officials and their policies.				
Comments:	—	—	—	—
3. Students may publish and distribute student papers without any review or censorship by school authorities.				
Comments:	—	—	—	—
4. Students may include in student papers articles that: (i) deal with sensitive or controversial topics;	—	—	—	—
(ii) advocate illegal action or disobedience to school and public regulations;	—	—	—	—
(iii) contain obscene or illicit materials.	—	—	—	—
Comments:				
5. Student papers may include advertisement by radical or subversive groups;	—	—	—	—
and may include advertisement of a sensitive nature (e.g., related to sensuality, irreverence, political unorthodoxy, etc.).	—	—	—	—
Comments:				

	Yes	No	Policy is Off.	Policy is Cus/Prac.
6. Students may publish "underground" papers (i.e., papers not officially recognized by school authorities) within school premises. Comments:	—	—	—	—
7. The student editorial staff are free to choose their faculty adviser. Comments:	—	—	—	—
III. The right to form or join associations				
1. Students may form socio-political or pious clubs which represent the school counterpart (e.g., Young Liberals Club) or accepted organizations in the community at large. Comments:	—	—	—	—
2. Students may form socio-political or pious clubs whose views or beliefs go counter to those held by the community served by the school. Comments:	—	—	—	—
3. Students are free to choose their club's adviser. Comments:	—	—	—	—
4. Students are free to hold student-planned activities outside the campus without interference from school authorities. Comments:	—	—	—	—
5. Students are free to join any school organization provided they stay within the range (i.e., maximum number one may join) set by school authorities. Comments:	—	—	—	—
Students are free to join any organization				

	Yes	No	Policy is Off.	Policy is Cus/Prac
based outside the campus. Comments:	___	___	___	___
IV. The right to personal appearance and behavior				
1. Male students are free to have long hair. Comments:	___	___	___	___
2. Female students may come to class with hairdos of their choice. Comments:	___	___	___	___
3. Students are free from dress code imposed by school authorities. Comments:	___	___	___	___
4. Students may wear any clothes of their choice. Comments:	___	___	___	___
5. Students are free to smoke in the classroom;	___	___	___	___
Only in specified areas. Comments:	___	___	___	___
6. Schools are required to have dress and behavior code;	___	___	___	___
students have had significant input in formulating the code. Comments:	___	___	___	___
7. Students are allowed, on campus, to kiss or embrace intimately. Comments:	___	___	___	___
V. The right to privacy				
1. School authorities may undertake searches of				

	Yes	No	Policy is Off.	Policy is Cus/Prac.
student bags and briefcases;	___	___	___	___
may allow others to make such searches.	___	___	___	___
Comments:				
2. School authorities may undertake searches of student lockers and desks;	___	___	___	___
may allow others to make such searches.	___	___	___	___
Comments:				
3. Information from student's personal file may be released only on his request or with his consent.	___	___	___	___
Comments:				
4. Confidential student information may be talked about only in professional or official situations.	___	___	___	___
Comments:				
VI. The right to reasonable punishment.				
1. Schools are required to have a code or statement containing a list of punishable school offenses;	___	___	___	___
the code contains corresponding punishment for a given offense.	___	___	___	___
Comments:				
2. Students have had significant role in the formulation of the code.	___	___	___	___
Comments:				
3. School authorities may suspend or expel a student who has been convicted of a crime or offense by civil authorities.	___	___	___	___
Comments:				

	Yes	No	Policy is Off.	Policy is Cus/Prac.
4. Students may be granted diplomas or may have records sent to employers even if schools' accounts have not been paid for. Comments:	—	—	—	—
5. Students may be expelled or given long-term suspension for serious offenses. Comments:	—	—	—	—
6. Teachers by themselves may spank or strap students according to their sole individual judgements. Comments:	—	—	—	—
7. Physical punishments may be inflicted on students. Comments:	—	—	—	—
VII. <u>The right to due process</u>				
1. Before a student is subjected to expulsion or long-term suspension (about ten days or more), the school authorities must				
i. give student (and parents) a notice of hearing	—	—	—	—
which contains (a) a statement of the alleged offense;	—	—	—	—
(b) a declaration of the student's right to legal counsel;	—	—	—	—
(c) a description of the procedure of the hearing;	—	—	—	—

	Yes	No	Policy is Off.	Policy is Cus/Trac.
ii. conduct a hearing	___	___	___	___
which includes (a) informing students of his right to remain silent;	___	___	___	___
(b) presentation of evidence and witness against the student;	___	___	___	___
(c) cross-examination of accusatory evidence;	___	___	___	___
(d) presentation of evidence and witnesses on behalf the student;	___	___	___	___
and (e) recording of proceedings;	___	___	___	___
iii. make findings clear to student and parents; and	___	___	___	___
iv. allow student to make an appeal.	___	___	___	___
Comments:				
2. Procedures for short-term suspension are similar to those for long-term suspension.	___	___	___	___
Comments:				
3. For short-term suspension, the school authorities are required to undertake certain uniform procedures.	___	___	___	___
Comments:				
4. For short-term suspension, the authorities are to follow the following procedures: (Please outline the steps required.)				
5. School authorities may cause the immediate removal of a student from the school or campus under certain circumstances, namely: (Please enumerate.)				

	Yes	No	Policy is Off.	Policy is Cus/Prac.
VIII. The right to academic matters				
1. Students have the final say in determining whether they will go to the academic or vocational or any other stream. Comments:	___	___	___	___
2. Students have the final say in determining whether they will go to a special class, slow class, or any similar special grouping based on ability or talent. Comments:	___	___	___	___
3. Students have the final say in determining their elective subjects. Comments:	___	___	___	___
4. Students are represented in curricular committees. Comments:	___	___	___	___
5. Students are represented in policy-making committees or bodies in school. Comments:	___	___	___	___
6. Students are given freedom in determining the content of their subjects;	___	___	___	___
and the manner/methods of going about their work in their subjects. Comments:	___	___	___	___

GENERAL COMMENTS: (Please feel free to make any comment you wish to make in relation to this questionnaire and to the questions contained herein.)

Appendix C

Statements on Student Rights and Responsibilities: Newfoundland and Wisconsin.

No body or organization in Newfoundland seems to have taken the issue of student rights more seriously than the Newfoundland Teachers' Association. In its 1975 Convention, the NTA adopted a document outlining a statement on student rights and responsibilities as part of its policy. While not the official policy of Newfoundland school boards, the statement could be regarded as an authoritative reflection of the state of student rights in the province insofar as it is subscribed to by the teacher force in Newfoundland. Familiarity with this path-breaking document is imperative for anyone interested in the student rights issue.

The comparative perspective on student rights in the province can be furthered by actually being able to compare and contrast sample documents representing Newfoundland and Wisconsin. This appendix therefore includes the NTA policy and a policy statement issued by the Unified School District of Beaver Dam in the State of Wisconsin.

A. NTA Policy on Student Rights and Responsibilities.

I. Preamble

If students are to become trained in the democratic process, they must be given every opportunity to participate in the life of the school and the community, with rights and responsibilities broadly analogous to those of adult citizens as documented in the Newfoundland Human Rights Act and the Universal Declaration of Human Rights, bearing in mind, however, that Article (26) (3) of the Declaration of Human Rights states that "parents have a prior right to choose the kind of education that shall be given to their children".

II. General

1. All students should have a right to be taught by teachers who can provide psychologically safe and emotionally secure learning environments.

2. All students should have the continuous opportunity to develop individuality through classroom responsibilities and programmes.

3. All students should have the opportunity to participate in normal curricular and co-curricular activities.

4. Students should be helped (to) realize that rights are accompanied by responsibilities and should assume a responsive and responsible attitude conducive to learning.

5. Students should have the right to participate in seminars and workshops where student government and student rights and responsibilities are examined and discussed.

III. Student Government

1. Where feasible Student Councils should be set up and students should have the right to help formulate a constitution in cooperation with the School Administration.

2. The following rights should be guaranteed within a Student Government Constitution:

   a) All students should have the right to vote in the election of a Student Government.

   b) Scholastic achievement should not be a prerequisite for participation in Student Government.

   c) Provision should be made for faculty-student participation in decision-making pertaining to Student Government activities.

3. The following is a suggested procedure for selection of officers to the Student Government.

   a) All students who meet the requirements fixed by the Constitution should be permitted to be candidates.

   b) All condidates should have equal opportunity to conduct their campaigns within the school except when such would threaten to disrupt the educational process.

   c) Voting and vote-counting procedures should make provision for scrutiny by representatives of all candidates.

   d) Any electoral rules which may be adopted should apply equally without discrimination to all candidates.

IV. Students' Rights to be Heard

1. Students should be encouraged to plan and participate in assemblies.

2. Students must seek advice from the faculty on such matters as style and length of any presentation and to the appropriateness of content.

V. Petitions

1. A petition is a request for change which may or may not be granted.

2. No petition may be circulated by the Student Government without prior consultation with the administration.

VI. Freedom of Association

1. In consultation with and subject to the approval of the administration, students should be free to organize associations within the school for social, athletic and other proper and lawful purposes, provided no such group denies membership to any student because of race, sex, religion or nationality.

2. All student organizations should be entitled to faculty advisers.

3. The use of rooms and other facilities should be made available, as far as their primary use for instructional purposes permits, to recognized student organizations. The student body should be aware that they share the responsibility with school authorities to safeguard school property.

4. Students requesting use of facilities for activities involving outside groups must clear this request with the administrator.

VII. Students' Lockers

1. Students should be informed that the administration has the right to inspect lockers.

2. Where lockers are provided students have the responsibility to keep their lockers locked at all times.

VIII. Married and/or Pregnant Student

Students who marry and /or become pregnant prior to completing Grade XI should have the right to continue their education unless there is clear and compelling evidence that their presence in the classroom or school does, in fact, disrupt the educative process of other students.

B. Student Rights and Responsibilities: Unified School District of Beaver Dam, Wisconsin.

Students in the Beaver Dam Unified School District schools shall be extended the following rights, accompanied by those responsibilities related to them.

1. Attendance

(a) It is the student's right to: Attend school in the district in which his parent or legal guardian resides, from age 5 to 20 or graduation from high school.

(b) It is the student's responsibility to: Meet the legal attendance requirements by attending school daily, except when ill, being on time for all classes, following and attempting to complete the course of instruction prescribed by the Board of Education, and conforming to school rules.

2. Student Participation- Assembly Programs

(a) It is the student's right to: Participate in selecting, planning and conducting assembly programs. (It is the principal's responsibility to determine that the choice of topics and speakers is consistent with the Goals of Education in Beaver Dam, and to determine whether attendance shall be voluntary or required.)

(b) It is the student's responsibility to: Work jointly with the faculty in the processes necessary for assembly programs.

3. Student Government

(a) It is the student's right to: Be represented by an active student government selected by free democratic process.

(b) It is the student's responsibility to: Run for office, or consciously vote for the best candidates, and make problems known to the administration through elected representatives.

4. Development of Policies and Rules

(a) It is the student's right to: Through the elected student government, make proposals for the development and revision of major Board of Education and local school policies and rules which affect them.

(b) It is the student's responsibility to: Take an active role in processes necessary to develop or revise rules.

5. Co-Curricular Organizations

(a) It is the student's right to: Form and participate in co-curricular organizations such as clubs.

(b) It is the student's responsibility to: Obtain authorization from the principal, and have faculty or such other adult supervision as may be approved by the principal.

6. Patriotic Exercises

(a) It is the student's right to: Have the opportunity to participate in and/or observe patriotic exercises in school.

(b) It is the student's responsibility to: Express patriotism in appropriate fashions.

7. Loyalty Oaths

   (a) It is the student's right to: Not be required to take a loyalty oath, say a pledge, sing an anthem or take part in patriotic exercises.

   (b) It is the student's responsibility to: Give due respect to the rights of others to express their patriotism in approved fashion.

8. Religious Exercises

   (a) It is the student's right to: Not be required to violate his/her own religious beliefs while in school.

   (b) It is the student's responsibility to: Not violate the rights of others with respect to religion.

9. Freedom of Inquiry and Expression

   (a) It is the student's right to: Express his/her views and opinions on topics presented in his/her courses in a respectful manner.

   (b) It is the student's responsibility to: Permit differences of opinion and not interfere with the rights of individuals to hold and express their own views.

10. Petition

   (a) It is the student's right to: Circulate petitions for signature at all times except during classes and assemblies.

   (b) It is the student's responsibility to: Act in a responsible way through proper channels in seeking appropriate action to solve problems.

Note: If petitions are presented by students to school authorities, students have the right to have their petitions considered and to receive replies within five days. The decision of the principal may be appealed to the Superintendent of Schools.

11. School-Sponsored Publications

(a) It is the student's right to: Decide on the content of school-sponsored publications (newspapers, year books, literary magazines) within guidelines set cooperatively with the teacher-advisor, who shall provide direction and guidance on grammar, format, suitability of materials, and literary taste.

(b) It is the student's responsibility to: Work cooperatively in setting up appropriate guidelines for publications, and to participate in the expression of a variety of viewpoints.

12. Non-School-Sponsored Publications

(a) It is the student's right to: Distribute in school at the appropriate time and place publications that are not school-sponsored.

(a) It is the student's responsibility to: (For non-school-sponsored publications)

(1) Determine in advance from the administration the time, place, and manner of distribution.

(2) Distribute only those which bear the name of the sponsoring organization or individual.

(3) Sell only those which are published by students enrolled in Beaver Dam public schools.

(4) Distribute publications written in good taste, not obscene, libelous, disruptive, or of a nature which would tend to interfere with school processes.

(5) Be informed of circumstances which would justify the halting of distribution and the imposing of disciplinary action by the principal after the distribution has begun.

13. Symbolic Expression

(a) It is the student's right to: Wear or display

buttons, armbands, flags, decals, or other badges of symbolic expression.

(b) It is the student's responsibility to: Avoid any manner of expression which materially and substantially interferes with the orderly processes of the school, or is intended to mock, ridicule or otherwise deliberately demean or provoke others because of race, religion, national origin, or individual views.

14. Student Records

(a) It is the student's right to: Together with his/her parents, or separately from them, review the student's cumulative school records in conference with appropriate school personnel.

(b) It is the student's responsibility to: Request school officials to determine a time and the manner of presentation of recorded information.

Note: 1. If a student has reached the age of 18, or is younger than 18 and has written permission of his/her parent or is accompanied by his/her parents, he/she may examine his/her confidential records and health records, provided the appropriate school or health department official is present to explain and interpret these records.

2. A student and his/her parents have the right to challenge for cause any materials in the student's cumulative, confidential or health records, and to present evidence or argument that such materials should be changed or removed. The principal shall decide whether challenged materials are to be changed or removed. That decision is subject to appeal to the Superintendent of Schools.

3. A student who has reached the age of 18, or a younger student with written permission of his/her parents, must give written permission to the school before that school may

provide student records to employers, colleges, and other persons outside the school system.

15. Search and Seizure

(a) It is the student's right to: Be free from unreasonable searches and seizures.

(b) It is the student's responsibility to: Cooperate with reasonable searches.

Note: It is presumed that possession of contraband on the person of the student or in his/her locker poses an immediate threat to the order of the school and the safety and welfare of other students. Accordingly the principal, or the assistant principal, or authorized security officer, may conduct a reasonable search of a student on the school premises or at a school sponsored event where there is probable cause to believe that the student has in his/her possession an item, the possession of which is considered contraband under the law. The search preferably should be in the presence of a third party who is of majority age.

16. Locker Searches

(a) It is the student's right to: Be notified of general locker checks.

(b) It is the student's responsibility to: Be present at his locker at the designated time of a locker check.

Note: 1. The school officials may conduct a search of every part of the physical plant of the school and, upon reasonable cause, students' lockers.

2. Any confiscated property shall be turned over to the proper civil authorities to be disposed of according to law.

17. Non-Discrimination

(a) It is the student's right to: Free, equal, and

non-discriminatory treatment in regard to participation in any course in the curriculum, school-sponsored organizations, extra-curricular program, occupational training- any educational program or activity operated by the school- without restrictions based on sex, race, religion, ethnic origin, economic status, or for any other reason except as provided by law or by requirements reasonably related to the purpose of the activity.

(b) It is the student's responsibility to: Avoid entry into activities for which they are not reasonably qualified.

18. Dress and Grooming

(a) It is the student's right to: Dress in such a way as to express his/her personality, except in situations where the standard of dress and grooming is a reasonable requirement of a course or activity, or is necessary for reasons of health and safety, or disrupts school proceedings.

(b) It is the student's responsibility to: Dress so as to meet recognized standards of health, safety, and good taste as determined by the student and his/her parents.

19. Discipline

(a) It is the student's right to: Expect that the school will be a safe place for all to gain an education, that is, safe from physical and psychological harm, and protective of property.

(b) It is the student's responsibility to: Know what behavior is acceptable, be aware of all rules and expectations regulating student behavior, and conduct oneself in accordance with those guidelines.

20. Respect

(a) It is the student's right to: Respect from

teachers and administrators, which excludes being subject to cruel and unusual punishments, especially those which are demeaning or derogatory, or seriously diminish one's self-esteem.

(b) It is the student's responsibility to: Give respect to their teachers and administrators.

Note: Physical force is permitted in order to restrain a disruptive student, provided the force is reasonable under the circumstances.

21. Off-Campus Conduct

(a) It is the student's right to: Be free of punitive action against him/her for off-campus conduct during non-school hours, unless it is directly related to school activities or school personnel.

(b) It is the student's responsibility to: Show respect for the rights of other students and school personnel both on and off school property.

22. Anonymity as Witness

(a) It is the student's right to: Expect that should he/she bear witness in a disciplinary case, his/her request for anonymity be honored by the school.

(b) It is the student's responsibility to: Be willing to volunteer information in serious disciplinary cases should he/she have information of importance in such a case.

23. Attendance in School

(a) It is the student's right to: Not lose his/her right to attend school except for just cause and in accordance with due process of law.

(b) It is the student's responsibility to: Not be guilty of truancy, or conduct that disrupts

class work, or involves disorder, or invades the rights of others.

Note:

1. Suspension is a function of the school administrator; expulsion is a function of the Board of Education.

2. Parents should be notified promptly in all cases of suspension.

3. Prior to any suspension a student must be given an informal hearing including::

   a) oral or written notice of the charges against him/her.

   b) an opportunity to present his/her side of the story.

   c) an explanation of the evidence.

4. Students whose presence poses a danger to persons or property, or an ongoing threat of disrupting the academic process, may be immediately removed from the school. In such cases, the necessary notice and informal hearing shall follow as soon as practicable.

5. Students who are suspended from school to the custody of their parents may not participate in any school-sponsored activities and are not permitted on school grounds during the period of suspension.

6. Continued and willful disobedience, the habitual use of profanity or obscene language, injury of individuals or school property, are causes for punishment and suspension from school. A student can be suspended for something he has done off as well as on school property if school authorities can prove that such action is reasonably necessary for the student's physical or emotional safety or that of other members of the school community.

7. Either the principal or the Superintendent of schools may reinstate a student after a suspension.

24. Due Process

(a) It is the student's right to: Expect that reasonable notice will be given regarding policies, regulations, and rules affecting students.

(b) It is the student's responsibility to: Cooperate with the notices that are given, and participate in the formulation of policies and rules.

Note: 1. School boards may expel any obstinately disobedient and disorderly student after a proper investigation of his/her behavior, if found necessary to the peace and usefulness of the school and they can restore him/her on satisfactory evidence of his/her repentance and amendment.

2. In expulsion proceedings a student has the right to the following elements of due process:

a) A written statement of the charges against him/her and the grounds justifying the sanction to be imposed.

b) A hearing.

c) A means of effective appeal.

3. The following are the rights of a student regarding hearings in expulsion situations:

a) Informal hearing: Under ordinary circumstances, a student is entitled to the opportunity to demonstrate to the principal (or Superintendent of Schools) that there is a case of mistaken identity or some compelling reason why he/she should not be suspended pending a full hearing.

b) Formal hearing: Courts have held that in any situation where a fundamental right may be denied, a student must be afforded all appropriate elements of due process. This applies in cases involving expulsion, but may apply also when a suspension's timing is crucial for a particular student because of certain student activities, etc.

i) The full hearing must be held within a

reasonable period of time after the suspension.

ii) A student may be represented by a lawyer.

iii) The hearing shall be held by the Board of Education for expulsion proceedings.

iv) The student is entitled to the rudiments of an adversay proceeding. These rudiments include the right to be presented with the names of witnesses against him/her, copies of statements and affidavits of those witnesses, the right to demand that any such witness appear in person to answer questions, and the right to and produce witnesses on his/her behalf. The precise nature of the hearing depends upon the circumstances of the particular case, such as the sanctions to be imposed, or at what level the hearing is held.

v) A record must be kept of the hearing procedures. A student is entitled, at his/her own expense, to copy the transcript.

vi) The proceedings must be held with all reasonable speed.

vii) If a student is found innocent, he/she may request that any written entry referring to the incident be expunged from the school records.

25. Immediate Appeal Process

If a student feels his/her rights as indicated above in numbers 1-24 have been violated by anyone, he/she may appeal to the school principal. If not satisfied with the decision made by the principal, the student may appeal in writing to the Superintendent of Schools. Within ten school days, the superintendent shall hold a hearing on the matter and issue a written ruling within ten school days from the hearing. The student may appeal in writing within ten days such a ruling to the Board of Education, or a committee thereof. The Board shall hear that appeal within twenty school

days upon receiving the written request and place its decision in writing to the grievant within twenty school days. This decision is appealable to the State Superintendent of Schools. He/she may appeal the case in court without going through the administrative procedures outlined above, but the court may require the exhaustion of channels available within the local or state school system. The Board of Education also has the right of appeal.

26. Distribution and Review of this Document

(a) This document shall be made available to all students and faculty members, as well as to interested parents.

(b) This document shall be reviewed in one year and bi-annually thereafter as follows:

i) A committee composed of faculty, parents, administrators, and students shall make recommendations.

ii) The committee report shall be sent to the Superintendent of Schools and the Board of Education.

iii) The Board of Education will, following receipt of the committee's report and the superintendent's recommendations, review the code's effectiveness and make such modifications as may be warranted.

Appendix D

Schools Act Provisions Relating to Conduct of Pupils

1970 Revised Statutes of Newfoundland, as Amended in 1974

PART VI.

Conduct of Pupils.

82. Every pupil in a school shall

(a) come to school clean and tidy in his person and his clothing and be courteous to his fellow pupils, obedient to his teacher and diligent in his studies;

(b) in cases of absence or lateness bring to his teacher from a parent or guardian a written reason for his absence or lateness;

(c) not leave school at the end of the day until his class has been dismissed;

(d) be subject to the school discipline in going to and returning from school and at all school games and school functions whenever and wherever held, as well as during school hours;

(e) come to school with all necessary text books and other school requisites; and

(f) conduct himself in accordance with the requirements of the regulations, rules and by-laws of the appropriate School Board.

83. Subject to Section 83A, when a pupil fails to apply himself to his studies or does not comply with the discipline of the school or in respect of whom the principal, for any other serious reason, is of opinion that such action should be taken, the principal shall

(a) warn him and record the date of the warning and the reason;

(b) inform, by letter, the pupil's parents or guardians that the pupil has been warned;

(c) send a copy of the letter referred to in paragraph (b) to the appropriate Superintendent; and

(d) discuss with the pupil's parents or guardians the circumstances giving cause for the warning,

and, if, after a suitable period, the pupil makes no satisfactory effort to reform, the principal shall consult with the appropriate Superintendent and, if necessary, their joint recommendation shall be sent to the School Board concerned, and if, in the opinion of the School Board, expulsion of the pupil is necessary to the proper conduct of the school, the School Board may so order, and such order shall be complied with by all persons concerned, but no expulsion of a pupil coming within the limits of compulsory attendance is effective without the written approval of the Chief Superintendent in the Department.

83A. (1) When a pupil has been expelled under Section 83, any parent or guardian of the pupil concerned may, within thirty days after the effective date of such expulsion, request in writing directed to the Minister that such expulsion be reviewed, and the Minister shall appoint a Review Board of not less than three members, including a member selected for the purpose by the governing body of The Federation of School Boards of Newfoundland or its successor (while such Federation or successor exists), to carry out an investigation into the circumstances of the expulsion, to review the expulsion, and to make a recommendation upholding or reversing the expulsion, and the Minister shall make an order implementing such recommendation, and such order shall be promptly complied with by, and is final and binding upon, the School Board and all other persons concerned.

(2) The expulsion referred to in subsection (1) remains effective pending compliance with the order of the Minister referred to in that subsection.

84. (1) Teachers are permitted to administer corporal punishment in reason and with humanity, but they shall refrain from the use of it, until other means

of discipline have been tried, and striking children on the head is forbidden, ~~and corporal punishment~~ shall not be administered to delicate or nervous children.

(2) A teacher shall not administer corporal punishment to any pupil unless a third person, not being a pupil, is present to witness such punishment.